

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

**CHRISTOPHER WILSON, individually and on)
behalf of all others similarly situated, et al.,)**

Plaintiffs,)

v.)

**DIRECT BUY, INC.,)
UNITED CONSUMERS CLUB, INC., and)
DIRECTBUY HOLDINGS, INC.,)**

Defendants.)

CASE NO. 3:09-CV-00590 (JCH)

April 12, 2011

**BRIEF *AMICUS CURIAE* OF THE ATTORNEYS GENERAL OF
CONNECTICUT, TENNESSEE, ALASKA, ARIZONA, ARKANSAS, COLORADO,
DELAWARE, THE DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, IDAHO,
ILLINOIS, IOWA, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEVADA, NEW
HAMPSHIRE, NEW MEXICO, NEW YORK, NORTH DAKOTA, OHIO, OKLAHOMA,
OREGON, PUERTO RICO, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA,
TEXAS, UTAH, VERMONT, WASHINGTON, AND WEST VIRGINIA IN OPPOSITION
TO THE PROPOSED SETTLEMENT**

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INTRODUCTION

The Attorneys General of Connecticut, Tennessee, Alaska, Arizona, Arkansas, Colorado, Delaware, the District of Columbia, Florida, Georgia,¹ Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, and West Virginia, in their capacity as *amici curiae*, make a special appearance² to urge this Honorable Court to reject the proposed settlement. The Attorneys General submit this brief to protect consumers who would be adversely affected by the approval of the proposed settlement.

The proposed settlement does not survive the heightened scrutiny for coupon settlements under the Class Action Fairness Act, Pub. L. No. 109-2, 119 Stat. 4 (2005) (“CAFA”), or for settlements filed prior to class certification. Furthermore, the proposed settlement does not constitute a fair, reasonable, and adequate settlement under traditional Federal Rule of Civil Procedure 23(e) analysis.

The proposed settlement is, in essence, a sales vehicle for Defendants designed to drive

¹ With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions for the State of Georgia.

² The Attorneys General are not submitting to the Court’s jurisdiction except as *amici* and the submission of this brief is without prejudice to the States’ ability to enforce and investigate claims related to the issues under dispute.

current and former customers into membership renewal contracts and to the same manufacturers and suppliers from whom Defendants have acknowledged receiving kickbacks and incentives. The proposed settlement cloaks the limited-time “free” memberships and reduced-price membership extensions as having value to absent class members. Standing alone, the memberships have little value and exponentially less than Plaintiffs’ estimates of \$40.8 million overall for current customers, Doc. No. 137, at 24, and \$14.3 million to former customers. Doc. No. 137, at 25-26.

These figures *vastly* overstate both the value to the class and Defendants’ disgorgement. They are based on dubious assumptions that among other things, (1) ignore built-in impediments to a high-utilization rate (*e.g.* forced purchase and lack of notification of when the two-month trial begins to current customers);³ (2) wrongly equate each membership dollar waived to a dollar of value to the class; and (3) do not address the facts that any lost revenue from monthly membership fees is substantially borne by DirectBuy’s non-party franchisees and would, at least, *potentially* be offset by increased revenue from renewal agreements.⁴

In reality, the “free” membership is nothing more than a negligible, time-limited

³ Current DirectBuy Members “who are still DirectBuy members as of the start of the free two-month period do not need notice because the two months will simply be added on to their extant membership periods.” *See* Doc. No. 137, at 30.

⁴ Additionally, even setting aside the fact that the class has to make a sizeable purchase to benefit at all, Plaintiffs’ counsel’s estimate of \$13,592,117 is based on an *average* cost of one-year renewal, rather than a *median* cost, which would more accurately account for the number of consumers at each membership level and the cost variances between membership levels. *See* Doc. No. 137, n. 8, at 24.

discount. To receive any benefit, the settlement *forces* absent class members to either purchase new memberships from Defendants or to make sizeable purchases from the same group of manufacturers and suppliers selected by Defendants. Worse, following the limited two-month membership period, lapsed members must first purchase a membership renewal before they, too, must purchase merchandise from vendors selected by Defendants in order to realize any benefit.

The scant relief offered under the proposed settlement to hundreds of thousands of absent class members nationwide, stands in stark contrast to the \$4,000 cash incentive payments to each of the named plaintiffs (totaling \$28,000), the \$350,000 to \$1,000,000 in attorneys' fees to class counsel provided under the proposed settlement, Proposed Settlement, at 23, and the initial membership fees themselves, which ranged from \$1,000 to \$5,000 plus additional charges with financing.

Moreover, the proposed settlement is devoid of injunctive relief⁵ and contains a release that is both striking in its breadth⁶ and wholly inconsistent with the meager relief offered to absent class members. In essence, the settlement does not attempt to address the core problems raised by the suit, yet releases strong state consumer protection causes of action that have more value to each class member.

⁵ The most prominent wording on DirectBuy's chief webpage even states, "The Biggest Brands at direct insider prices" available at www.directuby.com (last visited April 9, 2011).

⁶ The settlement attempts to release liability for non-parties, including Defendants' franchisees and chosen manufacturers and suppliers. Proposed Settlement, at 8, 12.

The proposed settlement has all of the hallmarks of the abusive coupon settlements identified in CAFA's legislative history and previously by this Court in cases such as *Clement v. American Honda Finance Corporation*⁷ and should likewise be rejected in its entirety.⁸

STATEMENT OF FACTS

1. Plaintiffs allege that Defendants fraudulently misrepresented that paid DirectBuy memberships entitle customers to purchase goods from manufacturers and suppliers at actual cost⁹ when, in fact, Defendants receive kick-backs from the suppliers and manufacturers out of the purchase price paid by DirectBuy members — resulting in members paying more than the actual cost for such goods. *See* Compl., at ¶ 1.

2. Defendants have admitted that “[they] did not uniformly disclose to prospective DirectBuy members that [they] received and kept these cooperative advertising allowances and prompt payment discounts until early 2009.” *See* Doc. No. 137-2, ¶ 7. Post-2009, Defendants disclose on page 21 of a 27 page membership guide that “DirectBuy’s Corporate Headquarters and Franchisees *reserve the right*”¹⁰ to accept prompt payment discounts and other incentives

⁷ *Clement v. Am. Honda Fin. Corp.*, 176 F.R.D. 15, 24 (D. Conn. 1997) (Pre-CAFA case rejecting coupon-based settlement).

⁸ *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (stating that proposed settlement must stand or fall in its entirety).

⁹ The most prominent wording on DirectBuy’s chief webpage even states, “The Biggest Brands at direct insider prices” available at www.directuby.com (last visited March 17, 2011).

¹⁰ Putting aside the lack of prominence of the disclosure, the statement does not affirmatively state that this practice is occurring.

from suppliers, so long as pricing available to members is not adversely affected.” (Emphasis added.) Ex. 1 to this Brief, DirectBuy Membership Guide.

3. Under the terms of the proposed settlement, class members are divided into two categories for potential relief. Under the first tier, current DirectBuy members would receive an automatic two month extension of their DirectBuy membership and the “opportunity” to purchase either a slightly-discounted 28 month membership renewal for the price of a 24 month membership renewal or a 13 month membership renewal for the price of a 12 month membership renewal. Under the second tier, former DirectBuy members¹¹ would receive two months of membership, and the “opportunity” to purchase subsequent year memberships at \$200 per year (up to 10 years) if they have paid their initial membership dues in full. Absent class members will receive no monetary relief under the terms of the Settlement. *See Proposed Settlement*, part D, at 10-11.

I. THE PROPOSED SETTLEMENT IS SUBJECT TO AND DOES NOT SURVIVE HEIGHTENED SCRUTINY.

This proposed class action settlement is subject to heightened scrutiny both because it is in essence a coupon settlement, *see infra* I.A., and was negotiated prior to class certification. *See Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 88 (D. Conn. 2010) (“These circumstances

¹¹ Many of these former customers decided not to renew their memberships or continue purchasing Direct Buy merchandise after not seeing cost savings as advertised.

necessarily alter the character of the Rule 23 inquiry.”). As explained below, aside from the more rigorous review tools for coupon and in-kind settlements set forth in CAFA, heightened scrutiny, in this context, means that the substance of the parties’ proposed resolution should be more carefully examined and met with significantly less deference than would be the case in applying Federal Rule of Civil Procedure 23(e)(2) factors.

A. The Settlement Is In Essence a Coupon Settlement.

CAFA does not provide a specific definition for coupon settlements. Other jurisdictions have created a definition of a coupon settlement by analyzing the legislative history behind CAFA. “While CAFA does not expressly define what a coupon is, the legislative history suggests that a coupon is a discount on another product or service offered by the defendant in a lawsuit.” *Fleury v. Richemont N. Am., Inc.*, No. C-05-4525 EMC, 2008 WL 3287154, at *2 (N.D. Cal. Aug. 2, 2008). Here, the proposed settlement offers class members more of Defendants’ “service” – the purported opportunity to enjoy savings on purchases, but requires those purchases to be placed exclusively through Defendants with vendors of Defendants’ choosing.

The proposed settlement in this case meets *Fleury’s* coupon definition. In the case of the 13 month membership for the price of 12, the 28 month membership for the price of 24, and the \$200 membership fee per year, absent class members are offered modest discounts on

Defendants' buyers club membership fees. For the "free" two month trial membership component, absent class members receive a discount off the cost of purchasing from Defendants' network of manufacturers and suppliers with whom Defendants have a financial relationship.

In short, the proposed relief is still an in-kind contribution that requires future purchases from Defendants and does not result in complete disgorgement. Other federal courts have rejected in-kind compensation that shares these characteristics with coupons in proposed settlements as unfair. *See, e.g., Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 654 (7th Cir. 2006).

B. The Proposed Coupon Settlement Is Subject to Heightened Scrutiny.

While the fair, adequate, and reasonable language in CAFA mirrors the language of Federal Rule of Civil Procedure 23(e)(2), it is clear that Congress envisioned subjecting coupon settlements to a higher level of scrutiny than previously employed in pre-CAFA decisions interpreting Rule 23(e). *See Synfuel*, 463 F.3d at 653 ("[W]e note that in [CAFA] Congress required heightened judicial scrutiny of coupon-based settlements . . ."). Since the proposed settlement bears all of the hallmarks of an "in-kind" coupon settlement, including a disproportionate award of attorneys' fees and incentive payments when compared to relief for absent class members, it is subject to heightened scrutiny.

The Senate Judiciary Committee Report on the CAFA legislation expressly sets forth the intent to subject coupon settlements to heightened scrutiny:

[W]here [coupon] settlements are used, the fairness of the settlement *should be seriously questioned* by the reviewing court where the attorneys' fees demand is disproportionate to the level of tangible, non-speculative benefit to the class members. In adopting [the § 1712(e) requirement of a written determination that the settlement is fair, reasonable and adequate], *it is the intent of the Committee to incorporate that line of recent federal court precedents¹² in which proposed settlements have been wholly or partially rejected because the compensation proposed to be paid to the class counsel was disproportionate to the real benefits to be provided to class members.*

S. REP. No. 109-14, at 31 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 32 (emphasis added).

Other federal district courts have recognized that coupon-based settlements are subject to heightened scrutiny. *See, e.g., Figueroa v. Sharper Image Corp.*, 517 F.Supp.2d 1292, 1321 (S.D. Fla. 2007).

The rationale for this heightened scrutiny is set out in the Senate Report, in which the Judiciary Committee noted that over the past several years it had become aware of:

[N]umerous class action settlements approved by state courts in which most—if not all—of the monetary benefits went to the class counsel, rather than the class members those attorneys were supposed to be representing. These settlements include many so-called “coupon settlements” in which class members receive

¹² Some of these pre-CAFA cases include: *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995), *cert. den'd*, 516 U.S. 824 (1995); *Clement v. Am. Honda Fin. Corp.*, 176 F.R.D. 15, 29 (D. Conn. 1997); *Buchet v. ITT Consumer Fin. Corp.*, 845 F.Supp. 684, 694 (D. Minn. 1994), *amended*, 858 F.Supp. 944).

nothing more than promotional coupons to purchase more products from the defendants.

S. REP. No. 109-14, at 16 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 16. Thus, the coupon-settlement section of CAFA, 28 U.S.C. § 1712, is “aimed at situations in which plaintiffs’ lawyers negotiate settlements under which class members receive nothing but essentially valueless coupons, while the class counsel receive substantial attorneys’ fees.” *Id.* at 30. The Judiciary Committee described the abusive potential of coupon settlements in this way:

Abusive class action settlements in which plaintiffs receive promotional coupons or other nominal damages while class counsel receive large fees are all too commonplace. The risk of such abusive practices is particularly pronounced in the class action context because these suits often involve numerous plaintiffs, each of whom has only a small financial stake in the litigation. As a result, few (if any) plaintiffs closely monitor the progress of the case or settlement negotiations, and these cases become “clientless litigation,” in which the plaintiff attorneys and the defendants have “powerful financial incentives” to settle the “litigation as early and as cheaply as possible, with the least publicity.” These financial incentives create inequitable outcomes. For class counsel, the rewards are fees disproportionate to the effort they actually invested in the case. . . . For society, however, there are substantial costs: lost opportunities for deterrence (if class counsel settled too quickly and too cheaply), wasted resources (if defendants settled simply to get rid of the lawsuit at an attractive price, rather than because the case was meritorious), and—over the long run—increasing amounts of frivolous litigation as the attraction of such lawsuits becomes apparent to an ever-increasing number of plaintiff lawyers.

Id. at 32 (footnotes omitted).

Accordingly, in considering whether a proposed coupon settlement is fair, reasonable, and adequate for class members, as § 1712(e) requires, a court is to consider, among other things,

“the real monetary value and likely utilization rate of the coupons provided by the settlement.”
Id. at 31.

Coupon settlements are subject to heightened scrutiny under CAFA in several other respects. First, § 1712(e) requires not only a fairness hearing for any coupon settlement, but also a written finding on fairness. It also authorizes the court to direct an alternative distribution of a portion of the value of unclaimed coupons. *Id.*

Second, § 1712(d) permits the court, in its discretion upon the motion of a party, to “receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.” 28 U.S.C. § 1712(d).

Third, § 1712(a)-(c) regulate the calculation and award of attorneys’ fees to class counsel in coupon settlements by providing that: (1) the portion of any attorney’s fee award attributable to the award of the coupons be based on the value to class members of the coupons that are actually redeemed, *see* 28 U.S.C. § 1712(a); and (2) any portion of such award that is not based on the recovery of coupons be calculated with reference to the amount of time class counsel reasonably expended working on the action, including, if appropriate, the application of a “lodestar” and multiplier. *See* 28 U.S.C. § 1712(b); *see also* 28 U.S.C. § 1712(c) (“mixed” awards based in part on coupons to be treated similarly).

C. The Proposed Settlement Is Also Subject to Heightened Scrutiny Because It Was Filed Prior to Class-Certification.

Regardless, the proposed settlement is subject to heightened scrutiny because it was filed prior to class certification. *See Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (“[T]he court *must be doubly careful* in evaluating the fairness of the settlement . . . Because of the limited control by class members, class settlements are subject to abuse.”) (emphasis added). *See also Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (“When a settlement is negotiated prior to class certification . . . it is subject to a higher degree of scrutiny in assessing its fairness.”); *Menkes v. Stolt-Nielsen, S.A.*, 270 F.R.D. 80, 89 (D. Conn. 2010).

D. The Proposed Settlement Does Not Survive Heightened Scrutiny.

In analyzing coupon settlements, this Court, Congress, and legal scholars have identified several major problems with coupon settlements, including that they often: (1) do not provide meaningful compensation to class members; (2) fail to disgorge ill-gotten gains from the defendant; and (3) require the class members to do future business with the defendant in order to receive compensation. *See* Christopher R. Leslie, *The Need to Study Coupon Settlements in Class Action Litigation*, 18 GEO. J. LEGAL ETHICS 1395, 1396-97 (2005); *see also* S. REP. NO. 109-14, at 31 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 32. All of these problems occur in the settlement proposed here.

1. The proposed relief is not meaningful.

First, the settlement does not provide meaningful compensation to absent class members. The relief offered to both Tiers requires absent class members to purchase new memberships or expensive goods from Defendants' chosen manufacturers and suppliers. Rather than provide relief from Defendants' business practices, absent class members are forced to conduct business with the Defendants in order to participate in the settlement.

Plaintiffs' counsel estimates that the proposed settlement has at least \$18,702,072 in total value to current customers. *See* Doc. No. 137, at 26. To reach this figure, Plaintiffs' counsel essentially takes the *average* cost of one year renewal, divides by 12 months, multiplies by two (two months "free"), and then multiplies by 407,682 (the number of current DirectBuy members) to get \$13,592,117. On top of this figure, Plaintiffs add an additional \$5,109,955 based on a 75% renewal rate of current customers and the *average* monthly cost of renewal. Doc. No. 137, n.10, at 25.

These figures are suspect not only because of their dubious underlying assumptions, but because some of them quite literally do not add up. Plaintiffs state that 75% of the 407,682 current DirectBuy members is 306,536, when this number is actually 305,761.5, which causes the asserted \$5,109,955 figure and the \$18,702,072 figure to be overstated by \$12,910.92. While this is a small point, it illustrates the amateur character of Plaintiffs' settlement valuation and speaks to the need for expert valuation analysis.

More importantly however, Plaintiffs' valuation is based on dubious assumptions. Initially, Plaintiffs assume that every waived membership fee dollar results in an actual dollar in settlement value to the consumer. This wholly ignores significant impediments to utilization during the "free" period that have been built in to the settlement. Quite simply, there is no intrinsic or other value to Defendants' buyers' club membership that does not involve purchasing a product.

To receive any benefit, the class member is forced to purchase, chiefly sizeable items with significant freight and handling costs,¹³ from Defendants' selected manufacturers and suppliers. DirectBuy's website shows that their advertised merchandise consists of furniture, appliances, electronics, lighting and fans, flooring and tile, home décor and accessories, home improvement items, outdoor furniture and appliances, jewelry, apparel, and other items that would be sizeable purchases.¹⁴

Additionally, current class members at the time the two "free" month membership goes into effect are not notified. *See* Doc. 137, n. 13, at 30. Plaintiffs' back-of-the-envelope analysis does not attempt to account for the actual purchasing habits of members, which impacts the value. Essentially, the current consumers who are most likely to purchase (and probably also

¹³ Nothing in the settlement document prohibits DirectBuy from raising the costs of its freight or handling charges to offset any costs associated with the settlement.

¹⁴ *See* www.directbuy.com (last visited March 29, 2011).

likely to purchase at the beginning of their membership periods),¹⁵ are never notified when the “free” trial begins. A two month “free” membership tacked on to the end of a membership period that a class member is not notified of and may have little interest in after making a sizeable purchase at the beginning of the membership period is of little value.

Also, Plaintiffs have used the *average* cost of one year renewal rather than the *median* cost of one year’s renewal. This has the effect of grossly overstating the asserted value of the settlement because, ignoring other impediments, it does not properly account for differences in the number of class members at each membership level and the differences in cost at each membership level.

Plaintiffs make similar suspect assumptions in their valuation analysis for former class members. Plaintiffs assert that the 22,636 former customers who registered receive approximately \$750,000 in value under the settlement ($\$16.67 \times 2 \times 22,636$). Doc. No. 137, at 26. Plaintiffs assume that every former customer who registered receives a dollar in value for each membership dollar waived. While registered former customers have expressed some interest, by definition, the sizeable purchases that include freight costs are still significant

¹⁵ See, e.g., Shannon D. Harrington and Krista Giovacco, *DirectBuy Bonds Plunge 23% Two Months After Private Offering Via JP Morgan*, March 25, 2011, available at <http://www.bloomberg.com/news/2011-03-25/directbuy-bonds-plunge-23-two-months-after-private-offering-via-jpmorgan.html> (quoting Moody’s analyst as saying appeal of company to consumers is the “ability to recoup the membership fee *fairly quickly* via a large purchase, which is typically home improvement oriented.”) (emphasis added).

impediments that will no doubt ensure that the utilization rate for the 22,636 former customers will be much smaller.

Further undermining the actual value of the free memberships is the likely utilization rate. This will likely be low given the fact that absent class members would have to spend additional money to take advantage of the proposed relief. Generally speaking, “[m]any, if not most, coupon settlements have been marked by low participation rates by class members.” *See Leslie, The Need to Study Coupon Settlements in Class Action Litigation*, 18 GEO. J. LEGAL ETHICS at 1396. The anecdotal evidence from class action litigation involving coupon settlements as a whole shows utilization rates as low as 3% or less. *Id.* at 1397 (citing *Buchet v. ITT Consumer Fin. Corp.*, 845 F. Supp. 684, 695 (D. Minn. 1994) and Brian Wolfman & Alan B. Morrison, *Representing the Unrepresented in Class Actions Seeking Monetary Relief*, 71 N.Y.U. L. REV. 439, 474 (1996)). There is no reason to suggest that utilization rates will be higher in this case. Slightly over 5% of former customers have registered in this case, but the actual rate should be measured by actual purchases, which as discussed above will further erode the 5% figure. Simply put, unhappy consumers are unlikely to make additional purchases from a company about which they have frequently complained.

The utilization rate is affected not only by the frequency of the product’s purchase rate and the absolute value of the coupons in question, but also by conditions imposed on utilization,

such as restrictions on transfer, duration, aggregation, utilization process, and product selection. *See* Leslie, *The Need to Study Coupon Settlements in Class Action Litigation*, 18 GEO. J. LEGAL ETHICS at 1403-08. In this case, utilization is likely to be low because most of these impediments have been built into the proposed settlement.

First, class members have no ability to transfer the coupon. *See* Proposed Settlement, parts II(D) and III(B)(1)(i) and (ii). Indeed, the terms of the membership in Defendants' buyers club prohibit the sharing of member benefits with non-members. *See* Ex. 1 to States' Brief, Membership Agreement, at 22. But even if restrictions on transferability were removed, a robust secondary market would not likely develop anyway because of the limited amount and size of the relief and the uncertain timing for utilization.

Second, the timeline in the proposed settlement also serves to make the settlement meaningless to many class members. In order to receive the relief, Tier 2 class members must register online within sixty days from the date of notice of the settlement. *See* Proposed Settlement, at parts III(I)(2) and III(I)(3). Tier 2 class members who fail to register within this relatively short timeframe are not eligible to receive settlement benefits. *Id.*

Third, while the settlement states that Defendants will not use information provided under the settlement for collection purposes, including Tier 2 registrations, *see* Proposed Settlement, at 13, Tier 2 consumers – especially those who have been previously targeted for

collection actions – are likely to be hesitant to provide Defendants, that are alleged to have committed fraud, with their required updated contact information.

Fourth, the relief offered under each Tier is the same regardless of how long the absent class member paid membership fees to Defendants. A current class member who has been paying membership fees for 10 years receives the same relief as one who has been paying for one month.

In short, the restrictions and conditions on utilization of the proposed coupons are significant and will probably depress the utilization rate even lower than the low rate ordinarily expected from a coupon settlement.

2. Defendants pay nothing out-of-pocket.

Defendants are required to pay nothing out-of-pocket and will disgorge considerably less than the 36.7% of the \$53 million in funds allegedly improperly retained as Plaintiffs contend. *See* Doc. No. 137, at 34. The only cash paid under the settlement goes to Plaintiffs' counsel and the named plaintiffs.

At the outset, foregoing money from memberships that may never have been renewed or upgraded in the first place does not constitute disgorgement. Regardless, Defendants would not bear the brunt of this loss anyway. Based on Defendants' franchise disclosure documents, non-party DirectBuy franchisees bear a substantial portion of any loss incurred. *See* Coll. Ex. 2 to

States' Brief, at 2, Franchise Disclosure Agreements (showing DirectBuy franchisees retaining 78% of new membership fees and 50% of renewal membership fees).

Any lost revenue from the forbearance of Defendants' portion of membership fees are potentially offset by forced class member purchases through their buyers' network. In addition, consumers would be compelled to do business with the very company whose conduct was claimed, by their representatives and counsel, to be deceptive.

The Seventh Circuit addressed similar concerns in *Synfuel*:

Our confidence in the fairness of the settlement is further undermined by the agreement's bias toward compensating class members with pre-paid Letter Express envelopes instead of cash. Pre-paid envelopes, like coupons, are a form of in-kind compensation. 'Compensation in kind is worth less than cash of the same nominal value,' since, as is typical with coupons, some percentage of the pre-paid envelopes claimed by class members will never be used and, as a result, will not constitute a cost to Airborne. In re Mexico Money Transfer Litig., 267 F.3d 743, 748 (7th Cir. 2001). [...] [A]lthough this case is not covered by the Class Action Fairness Act (CAFA) of 2005, we note that in that statute Congress required heightened judicial scrutiny of coupon-based settlements based on its concern that in many cases 'counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value.' Pub. L. 109-2, § 2(a)(3)(A), 119 Stat. 4, 4. We recognize that the pre-paid envelopes are not identical to coupons, since they represent an entire product, not just a discount on a proposed purchase. Nonetheless, they are a form of in-kind compensation that shares some characteristics of coupons, including forced future business with the defendant and, especially for heavier users, the likelihood that the full amount of Airborne's gains will not be disgorged.

Synfuel, 463 F.3d at 654.

As in *Synfuel* and in *Clement*, the settlement is inadequate and unfair because Defendants not only wholly avoid paying actual damages, but potentially stand to benefit from increased business if class members spend money in the buying club in a futile attempt to derive any benefit from the settlement relief proposed.

3. There is no injunctive relief.

The settlement utterly fails to address Defendants' conduct. Noticeably missing are any protections to prevent Defendants from continuing to mislead consumers into believing that their memberships provide access to the true wholesale price of goods. Enjoining future illegal conduct is an important component of civil RICO, which is Plaintiffs' chief claim. Civil RICO was designed, in part, to allow private litigants to aid the government in rooting out illegal activity. None of the alleged misrepresentations set forth in Plaintiffs' Complaint are addressed in the proposed settlement, nor do Defendants and their non-party franchisees agree to abstain from engaging in such conduct in the future. This is especially troubling given the volume and substance of consumer complaints against DirectBuy and Defendants' and their franchisees' reaction to such complaints. As but one example, the BBB gives DirectBuy of Brooklyn and Queens an "F" rating based, in part, on a lack of response to 33 consumer complaints.¹⁶

¹⁶ BETTER BUSINESS BUREAU, available at <http://www.bbb.org/new-york-city/business-reviews/general-merchandise-retail/direct-buy-of-brooklyn-queens-in-woodside-ny-80385/> (last visited April 9, 2011).

4. The release, attorneys' fees, and incentive payments are disproportionate to the relief offered to class members.

The proposed settlement would require the class to waive all claims relating to the underlying action against *both* Defendants and Related Parties, including DirectBuy franchisees and Defendants' chosen manufacturers and suppliers who are not even parties to the settlement.

The proposed release goes far beyond the release this Court found too broad in *Clement*. In that case, which alleged that Honda's leasing arm did not make proper disclosures, Honda sought to release claims arising from: (1) early termination/default fee disclosures in the lease agreement, (2) warranty disclosures in the agreement, and (3) unfair trade practices arising from the lease agreement. *Clement*, 176 F.R.D. at 29. This Court rejected the breadth of the release given the relief obtained and noted that "a defendant would normally be expected to pay a premium for this type of global peace." *Id.* (internal citations omitted). Defendants have not paid such a premium in this case and most likely will benefit from the proposed settlement.

The proposed settlement contemplates an award of between \$350,000 to \$1,000,000 to class counsel and \$4,000 for each named plaintiff, *see* Proposed Settlement, at 23-24, a tremendous amount of money given the early stage of litigation, the meager relief to class members, the concessions that class members are required to make, and the unfettered ability Defendants have to continue their conduct. The attorneys' fee request is also questionable in light of Plaintiffs' failure to take any formal discovery.

Additionally, the named plaintiffs enjoy a fundamentally different and greater award than absent class members enjoy even though they did “not suffer any different injuries, do not have different legal claims, and are no more ‘aggrieved’ than [the] class members.” *True v. Am. Honda Motor Co.*, No. EDCV 07-0287-VAP (OPx), 2010 WL 707338, at *11 (C.D. Cal. Feb. 26, 2010). Thus, the Court must ensure that the “class representatives’ interests [continue to] align with all putative class members’ interests. *Id.* at *8.

This Court has previously refused to approve coupon settlements where the relief to class members paled in comparison to the attorney’s fees and class representative compensation awarded. *See Clement v. Am. Honda Fin. Corp.*, 176 F.R.D. 15, 24 (D. Conn. 1997). In that case, this Court pointed out the striking disparity between a coupon award to class members valued at between \$75 and \$150 as compared to the \$2,500 awarded to class representatives, and \$140,000 awarded to class counsel. This Court held that the “wide gap between the size of fee awards and the judgments won for individual class members is cause for concern.” *Id.* (internal citations omitted).

The disparity between the relief provided to class members and class counsel is even more glaring in the instant case than in *Clement*. When the representatives stand to receive such a greater benefit, “conflict between the representative plaintiffs and those class members” invariably results because their monetary incentive to support the settlement is so much greater

than any individual of the class itself. *True*, 2010 WL 707338, at *11; *see also Andrews Farms v. Calcot, Ltd.*, Case No. CV-F-07-0464, 2009 WL 1211374, at *11 (E.D. Cal. May 1, 2009); *Amchem*, 521 U.S. at 627; *Hanlon*, 150 F.3d at 1021; *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001).

Thus, the Attorneys General respectfully urge the Court, in reviewing this proposed settlement, to be mindful of some of the pitfalls associated with in-kind or coupon settlements. One of those is the patent interest on the part of class counsel in a high fee award. *See Leslie, The Need to Study*, 18 GEO. J. LEGAL ETHICS, at 1398 (“Although class counsel are the guardians of the class, when the interests of the class and its counsel diverge, plaintiffs’ attorneys may pursue their own interests. When they are not properly monitored, the ‘plaintiff’s attorney [may] trade . . . a high fee award for a low recovery.’”). This is particularly true in coupon settlements, where class counsel may be tempted to present the value of the settlement as higher than it actually is. The other pitfall is the set of difficulties that coupon settlements present to the courts themselves: “the systemic pressure to approve settlements, the common deference to class counsel, and the difficulty of determining the actual value of settlement coupons.” *Id.* at 1399.

II. THE SETTLEMENT IS NOT FAIR, ADEQUATE, OR REASONABLE UNDER TRADITIONAL FEDERAL RULE OF CIVIL PROCEDURE 23(e) ANALYSIS

Federal Rule of Civil Procedure 23(e) requires court approval of any settlement involving a class action. Before such a settlement may be approved, the district court must determine that a class action settlement is fair, adequate, and reasonable, and not a product of collusion. *See Joel A. v. Giuliani*, 218 F. 3d 132, 138 (2d Cir. 2000). In the Second Circuit, courts assess whether a proposed settlement is fair, reasonable, and adequate by analyzing the strength of the claims and the likelihood of success on the merits should litigation proceed. “The primary concern is with the substantive terms of the settlement Basic to this . . . is the need to compare the terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982).

In evaluating substantive fairness, courts in the Second Circuit consider:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds*, *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 49 (2d Cir. 2000).

The proposed settlement in this case fails to pass muster even under this more traditional test. The most egregious failures are highlighted below.

A. The Available Claims Are Strong.

Under this factor, courts traditionally look at the strength of the claims that were pled. Here, given the breadth of the release, the Attorneys General submit that the analysis should also consider the strength of the claims *released*, including consumer protection claims.

Generally speaking, Plaintiffs assert injuries to the class based on Defendants' allegedly false and misleading representations, namely that membership in the buying club entitles class members to purchase products from manufacturers and suppliers at actual cost. *See* Compl. ¶ 1. Plaintiffs chose to assert civil RICO claims and an unjust enrichment claim to overcome choice of law and manageability objections at certification. *See id.* ¶¶ 40-78.

Here, because of the lack of formal discovery, it is difficult to evaluate the strength of Plaintiffs' civil RICO claim, which must overcome a host of procedural and evidentiary hurdles to succeed. *See, e.g., Reynolds v. Beneficial Nat'l Bank*, 260 F.Supp.2d 680, 691 (N.D. Ill. 2003) (finding inability to evaluate strength of RICO claim due to inadequate discovery). While informal discovery saves costs, it does not provide for wholly meaningful and probative fact-finding, which is especially important with complex legal claims like civil RICO.¹⁷

¹⁷ It is also suggestive of ineffective representation of the class's interests. *See Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982) (stating in order to supplement evaluation of settlement's terms, attention also has to be paid to, among other things, whether plaintiffs' counsel "[has] engaged in the discovery, necessary to effective representation of the class's interests." (internal citations omitted)).

While Plaintiffs' claims are arguably more appealing for nationwide certification purposes on manageability grounds, they are considerably weaker than the aggregate strength of absent class members' respective state consumer protection claims, which although not pled, are released under the proposed settlement. Proposed Settlement, at 12. These claims have real value to absent class members, but less value to class counsel who would have more difficulty asserting them collectively for a nationwide class. Given the breadth of the released claims, which also seeks to immunize non-parties like DirectBuy franchisees and Defendants' chosen manufacturers and suppliers, the analysis of the strength of the action should include an evaluation of strong waived claims that have not been pled.

Without the benefit of formal discovery, Plaintiffs contend that the relief contained in the proposed settlement should be evaluated in light of the significant obstacles that they would face to prevail on their chosen claims, including difficulty showing:

- Fraudulent intent (Doc. No. 137, at 14-15) (asserting legal advice, industry standard,¹⁸ and use of money for promotion or benefit of consumers);
- Materiality or reliance by consumers (Doc. No. 137, at 15-16) (asserting that amount of funds in questions was fraction of total merchandise purchase and lack of Defendants' awareness about consumers cancelling because of funds at issue);
- An improper benefit from advertising allowances from suppliers and manufacturers (Doc. No. 137, at 12); and

¹⁸ Industry standard practice is irrelevant to Mail and Wire Fraud, the predicate acts in this civil RICO claim. *See Blue Cross and Blue Shield of New Jersey, Inc. v. Philip Morris, Inc.*, 138 F.Supp.2d 357, 365-66 (E.D. N.Y. 2001).

- An obligation to pass on prompt-pay discounts to consumers (Doc. No. 137, at 13-14).

Putting aside the fact that Plaintiffs have every incentive to emphasize any purported litigation risk following preliminary approval and even accepting these contentions as true, Plaintiffs' arguments only emphasize why the non-pled released consumer protection claims are strong. While state consumer protection statutes are not often successfully applied *collectively* to a nationwide class (as opposed to the application of one state's consumer protection statute to a nationwide class or state-specific class), the statutes often do not have the same evidentiary and burden of proof hurdles as civil RICO or common law claims.

Most state consumer protection laws do not require a showing of fraudulent intent and the numerous defenses that are available to a defendant in a fraud case are simply not available.¹⁹

¹⁹ Alaska: *State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 535 (Alaska 1980); California: *Hewlett v. Squaw Valley Ski Corp.*, 63 Cal. Rptr. 2d 118, 130 (Cal. Ct. App. 1997); Connecticut: *Associated Inv. Co. v. Williams Assocs.*, 645 A.2d 505, 510 (Conn. 1994); Delaware: *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983) (intent not needed for affirmative misrepresentation, but intent of reliance of others must be shown for omission); Georgia: *Crown Ford, Inc. v. Crawford*, 473 S.E.2d 554, 556 (Ga. Ct. App. 1996); Idaho: *State ex rel Kidwell v. Master Distribs., Inc.*, 615 P.2d 116, 122-123 (Idaho 1980); Illinois: *Chow v. Aegis Mortgage Corp.*, 286 F. Supp. 2d 956, 963 (N.D. Ill. 2003); Indiana: *McKinney v. State*, 693 N.E.2d 65, 68 (Ind. 1998) (intent need not be shown except when seeking to meet statute's definition of "incurable" deceptive act); Kansas: *Moore v. Bird Eng'g Co.*, 41 P.3d 755, 764 (Kan. 2002) (intent not required except for substantive prohibitions that specifically make it an element); Maine: *Bartner v. Carter*, 405 A.2d 194, 200 (Me. 1979); Massachusetts: *In re TJX Cos. Retail Sec. Breach Litig.*, 564 F.3d 489, 497 (1st Cir. 2009) (systemic recklessness may suffice); Minnesota: *Church of the Nativity of Our Lord v. WatPro, Inc.*, 474 N.W. 2d 605, 612 (Minn. Ct. App. 1991); New Hampshire: *Kowalski v. Cedars of Portsmouth Condo. Ass'n*, 769 A.2d 344, 349 (N.H. 2001) (deception is actionable whether or not it is deliberate); New Jersey: *Leon v. Rite Aid Corp.*, 774 A.2d 674, 677 (N.J. App. Div. 2001) (intent and knowledge unnecessary except for omissions); New Mexico: *Page & Wirtz Constr. v. Solomon*, 794 P.2d 349, 354 (N.M. 1990); New York: *Riordan v. Nationwide Mut. Fire Ins. Co.*, 756 F. Supp. 732, 737-738 (S.D. N.Y. 1990) (showing of

Under many state consumer protection acts, negligent misrepresentations can violate the statute. *See, e.g., Smith v. Scott Lewis Chevrolet, Inc.*, 843 S.W.2d 9, 12-13 (Tenn. Ct. App. 1992). Plaintiffs' contentions asserting reliance on Defendants' general counsel's advice, maintaining consistency with the industry standard, and use of the money to market back to consumers generally have no bearing on whether a state consumer protection statute was violated.

To show a violation in many jurisdictions, one has to show that a statement or omission has the *tendency* to mislead a consumer as to a matter of fact.²⁰ Here, Defendants, as evidenced by their name DirectBuy, their marketing pieces, and standardized contracts, explicitly marketed to cost-conscious consumers and emphasized their purported ability to obtain home furnishing and other products "at cost." The reasonable consumer, in this context, would deem any statements or omissions affecting the total price he or she stood to pay as material, including kickbacks, prompt pay discounts, freight charges, and handling charges.

Contrary to Plaintiffs' assertions that materiality can be determined simply by looking at the total price consumer paid for merchandise compared with the funds at issue,²¹ even modest

intent or recklessness unnecessary, but may be considered for treble damages or attorney fees); North Carolina: *Torrance v. AS&L Motors*, 459 S.E.2d 67, 70 (N.C. Ct. App. 1995); Ohio: *Rose v. Zaring Homes, Inc.*, 702 N.E.2d 952, 956 (Ohio App. 1 Dist. 1997); Tennessee: *Tucker v. Sierra Builders*, 180 S.W.3d 109, 115 (Tenn. Ct. App. 2005); Texas: *Miller v. Keyser*, 90 S.W.3d 712, 716 (Tex. 2002); Vermont: *Jordan v. Nissan N. Am., Inc.*, 853 A.2d 40, 43 (Vt. 2004); Washington: *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 535 (Wash. 1986).

²⁰ *See, e.g., Tucker*, 180 S.W.3d at 115.

²¹ The argument also does not follow logically since consumers could have disproportionately purchased more expensive merchandise or made multiple purchases from a single membership account.

increases in the membership fees or other costs that have the effect of making their DirectBuy purchase approach or even exceed similar merchandise in competitor retail stores would be highly important to consumers – especially the cost-conscious consumers Defendants targeted.

Further, proof of reliance is generally not required under many state consumer protection statutes.²² Many state consumer protection statutes also do not require reliance in the state-only class context. As an example, under the California Unfair Competition Law, only the named class representatives have to meet the standing requirement of having “suffered injury in fact” and having “lost money or property as a result of” the defendant’s unfair competition. *See In re Tobacco II Cases*, 46 Cal. 4th 298, 315 (2009).

It is not surprising then, that in similar contexts, state courts have found the non-disclosure of kickbacks or secret relationships with other parties to be a consumer protection

²² Arizona: *Siemer v. Associates First Capital Corp.*, Case No. CV97-281TUCMRJCC, 2001 WL 35948712, at *4 (D. Ariz. Mar. 29, 2001) (reliance necessary but may be established by the fact that an individual purchased the product after the misrepresentations were made); Connecticut: *Aurigemma v. Arco Petroleum Products Co.*, 734 F. Supp. 1025, 1029 (D. Conn. 1990); Delaware: *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1074 (Del. 1983); District of Columbia: *Wells v. Allstate Ins. Co.*, 210 F.R.D. 1, 12 (D. D.C. 2002) (2000 amendments eliminated requirement of injury in fact and causation); Florida: *Davis v. Powertel, Inc.*, 776 So. 2d 971, 974 (Fla. 1st DCA 2000) (actual reliance unnecessary, both in individual and class actions); Illinois: *Connick v. Suzuki Motor Co., Ltd.*, 675 N.E.2d 584, 594 (Ill. 1996) (proximate cause, but not reliance, must be shown); Massachusetts: *Heller Fin. v. INA*, 573 N.E.2d 8, 13 (Mass. 1991) (reliance not necessary, but plaintiff must show causal connection between misrepresentation and injury); Michigan: *Dix v. American Bankers Life Assurance Co.*, 415 N.W.2d 206, 209 (Mich. 1987); New Jersey: *Gennari v. Weichert Co. Realtors*, 691 A. 2d 350, 366 (N.J. 1997); New Mexico: *Smoot v. Physicians Life Ins. Co.*, 87 P.3d 545, 551 (N.M. Ct. App. 2003) (proof of causation, but not necessarily reliance, is required); North Carolina: *Cullen v. Valley Forge Life Ins. Co.*, 589 S.E.2d 423, 431 (N.C. Ct. App. 2003); Oregon: *Sanders v. Francis*, 561 P.2d 1003 (Or. 1977) (depends on particular practice); Tennessee: *Harvey v. Ford Motor Credit Co.*, Case No. 03A01-9807-cv-00235, 1999 Tenn. App. LEXIS 448 at *2 (Tenn. Ct. App. July 13, 1999) (reliance is not required, but proximate cause showing is required).

violation.²³ Simply put, an analysis of the purported weakness of Plaintiffs' chosen claims is artificial given the breadth of the released consumer protection claims which, based on the available evidence, appear to be strong.

B. The Reaction of Class Members to the Settlement.

Even in the most egregious proposed settlements, objection rates are generally low because objections involve significant transaction costs for absent class members, assuming the members are even aware of the lawsuit. Objections require the expenditure of substantial time and effort, sometimes involve the retention of counsel, and require submission to a forum that may be intimidating to the lay person or have unknown consequences for them.

In spite of these obstacles, numerous objections²⁴ have been filed with the Court by class members in this case. Class member Patricia Pelsinger, in her objection filed with the Court, articulates the pitfalls identified by legal scholars, Congress, and this Court:

I wish . . . to be excluded from this judgment because the settlement agreement allows for no financial compensation which I deserve since DirectBuy did not provide the services promised in the membership contract. The company also intentionally did not disclose necessary and pertinent information in order to obtain my membership; this settlement agreement forces me to continue to do business with a company who in turn will be allowed to profit from me; this

²³ *Browder v. Hanley Dawson Cadillac Co.*, 379 N.E.2d 1206, 1212 (Ill. App. Ct. 1978) (violation for not disclosing the fact that a dealer would receive a commission on a credit insurance sale); *Cannon v. Cherry Hill Toyota, Inc.*, 161 F.Supp. 2d 362, 369 (D. N.J. 2001) (violates NJ law requiring disclosure of terms of any warranty or service contract offered by the dealer); *Swiger v. Terminix Int'l Co.*, No. 14523, 1995 WL 396467, at *7 (Ohio Ct. App. June 28, 1995).

²⁴ While some objectors have withdrawn their objections, their observations nevertheless remain relevant.

settlement agreement allows for no real punitive action against the company who blatantly defrauded me.

See Obj. of Patricia Pelsinger. Other class members highlight the very practices that underscore the strength of Plaintiffs' allegations and offer the court their view of meaningful relief:

This company's sales tactics prey on people like myself because they imply in their sales pitch that you are joining a very exclusive club and will be one of the privileged few in getting substantial bargainsThe settlement . . . offers no recompense to members such as myself who are out thousands of dollars, but it rewards this merchant by giving them new members and . . . fees, only so they can pocket this money and begin the same shameful practices of . . . lies and price increases after collecting payment for items. (John Giubilo);

The reason I am objecting is because I believe this settlement is unfair and inadequate in that all members . . . should be entitled to have the choice of receiving a monetary settlement if they do not want a free . . . membership . . . based on the fact that DirectBuy's practices are fraudulent and misleading Our membership which we purchased on 6/12/04 cost \$3,795 and we saved no more than \$300 I have no use for a free . . . membership at Direct Buy and would greatly appreciate a refund of the membership fee we paid. (Linda Brown); and

The settlement offering two months membership extension is nothing . . . class members has[sic] paid up to \$5,000 to initiate the membership. That's the core of the issue 2 months extension is worth \$33 only. It's uneven and inequitable for class members. (Ming-Root Song).

Regardless, numerous state Attorneys General have signed this brief to urge this Court to reject the proposed settlement. Other federal district courts have recognized in similar contexts that the opposition of the Attorneys General weighs in favor of rejection of the settlement. As an example, the Southern District of Florida stated the following:

Few class members have expressed interest in the parties' proposed settlement, and few have objected. Those who have objected, however, have done so most strenuously and with valuable insights. Indeed many of the revisions to the initial terms of the proposed settlement result from the salient points brought out by the objectors and their counsel. What distinguishes this case from other class actions, however, is the singular appearance of the Attorneys General of thirty-five states and the District of Columbia, representing hundreds of thousands, if not millions, of eligible class members. Appearing as *amicus curiae* on behalf of their citizens, the Attorneys General have objected at every turn to each version of the parties' proposed coupon settlement. . . . The vigor and substance of the objections presented counsels against a finding favorable to the parties on this [Fed. R. Civ. P. 23(e)] factor.

Figueroa v. Sharper Image Corp., 517 F.Supp.2d 1292, 1328 (S.D. Fla. 2007).

Legal scholars have noted that government attorneys generally possess the substantive expertise required to evaluate a class action settlement:

First, counsel for the state agency may provide considerable substantive expertise. A lack of procedural class action experience should not doom the state agency's ability to evaluate a settlement's adequacy. Much of our present thinking about the adequacy of a settlement focuses upon substance—whether the settlement approximates a probable trial result. The proposed settlement will be negotiated in the shadow of the substantive law. The attorney for an agency will likely be strong on substance, if not as strong on procedure.

Edward Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. CHI. LEGAL F. 403, 451 (2003).²⁵

²⁵ See, e.g., *Heaton v. Monogram Credit Card Bank of Georgia*, 297 F.3d 416, 426-27 (5th Cir. 2002) (allowing intervention by FDIC into class action alleging credit card fees to be illegal); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 298 (3d Cir. 1998) (illustrating the intervention by the Massachusetts Insurance Commissioner, the Attorney General, and the Texas Insurance Commission into a class action litigation brought by life insurance policyholders alleging fraudulent sales practices); Edward Brunet, *Improving Class Action Efficiency*

The States urge the Court to make a similar ruling on this component of the Second Circuit's Rule 23(e) test.

C. **The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery.**

Defendants were paid millions of dollars from suppliers and vendors with whom they did business, a practice that underscores their fraudulent misrepresentations to class members about the true costs of the goods sold through the buying club. Under the best result for the chosen liability theories and under the stronger consumer protection claims that are also released, Defendants would have to disgorge all or up to three times more of the kickbacks actually received.

In evaluating the reasonableness of the proposed settlement when compared to the best possible recovery in similar tests, other courts have taken a dubious view as to the true value of in-kind and coupon relief. As an example, the *Acosta* court acknowledged the inadequacy of coupon settlements:

While it is true that the Settlement would allow qualifying class members to obtain a free credit score in addition to a free credit report, the retail cost of this score is approximately \$3.00, and would again provide this value only to those individuals who are otherwise inclined to pay for such a service. In total, the free

by Expanded Use of Parens Patriae Suits and Intervention, 74 TULANE L. REV. 1919, 1932-34 (2000) (concluding that the state can be an effective monitor of class action settlements).

credit report and score component of the Settlement's economic relief is of very marginal, if any, value.

Acosta v. TransUnion, LLC, 243 F.R.D. 377, 390 (C.D. Cal. 2007). Similarly, in this case, the value of the slightly expanded buying club membership periods is minimal as compared to the possibility of much higher damages should this matter proceed. The value is further lessened by the fact that class members may not be financially able or inclined to continue shopping in the club. The settlement recovery has zero value to those class members. The relief offered here is even worse than the free credit reports in *Acosta* because DirectBuy requires purchases of additional membership or sizable purchases from Defendants' chosen network of manufacturers and suppliers.

Even if Plaintiffs were not able to certify a class and absent class members received nothing, absent class members would still be better off than they are under the proposed settlement, which forces them to pay Defendants or their chosen manufacturers and suppliers to receive any benefit. In that scenario, absent class members would possess their legal claims, including their stronger state consumer protection claims.

III. CONCLUSION

For the reasons stated, the proposed settlement should be rejected.

Respectfully submitted,²⁶

GEORGE JEPSEN
Attorney General of Connecticut

By and Through:

/s/ Matthew F. Fitzsimmons
Matthew Fitzsimmons (Bar. No. ct26981)
Assistant Attorney General
Connecticut Office of the Attorney General
110 Sherman Street
Hartford, CT 06105
(860) 808-5400 / (860) 808-5593 (fax)
matthew.fitzsimmons@ct.gov

ROBERT E. COOPER, JR.
Attorney General and Reporter of Tennessee

By and Through:

/s/ Brand Harrell*
Brant Harrell (TN B.P.R. No. 024470)
(*Visiting Attorney application forthcoming)
Assistant Attorney General
Office of the Attorney General and Reporter
425 Fifth Avenue North, 2nd Floor CHB
Nashville, Tennessee 37243
(615) 741-3549 / (615) 532-2910 (fax)
brant.harrell@ag.tn.gov

²⁶ This brief is supported by Attorneys General John J. Burns of Alaska, Tom Horne of Arizona, Dustin McDaniel of Arkansas, John Suthers of Colorado, Joseph R. Biden, III of Delaware, Irvin B. Nathan of the District of Columbia (Acting), Pamela Jo Bondi of Florida, Lawrence Wasden of Idaho, Lisa Madigan of Illinois, Tom Miller of Iowa, James D. Caldwell of Louisiana, William J. Schneider of Maine, Douglas F. Gansler of Maryland, Martha Coakley of Massachusetts, Bill Schuette of Michigan, Lori Swanson of Minnesota, Jim Hood of Mississippi, Chris Koster of Missouri, Steve Bullock of Montana, Catherine Cortez Masto of Nevada, Michael Delaney of New Hampshire, Gary King of New Mexico, Eric Schneiderman of New York, Wayne Stenehjem of North Dakota, Mike Dewine of Ohio, E. Scott Pruitt of Oklahoma, John Kroger of Oregon, Guillermo Somoza-Colombani of Puerto Rico, Peter Kilmartin of Rhode Island, Alan Wilson of South Carolina, Marty J. Jackley of South Dakota, Greg Abbott of Texas, Mark Shurtleff of Utah, William H. Sorrell of Vermont, Rob McKenna of Washington, and Darrell V. McGraw, Jr. of West Virginia. This brief is also supported by the Georgia Governor's Office of Consumer Affairs, through John Sours, Administrator, Fair Business Practices Act.

CERTIFICATE OF SERVICE

I, Matthew F. Fitzsimmons, hereby certify that on April 12, 2011, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing, and as set forth below. Parties may access this filing through the Court's CM/ECF System.

Daynor Maria Carman
Bracewell & Giuliani, LLP – CT
225 Asylum Street, Suite 2600
Hartford, CT 06103
(860) 947-9000
(860) 246-3201 (fax)
Daynor.carman@bglp.com

John Matthew Doroghazi
Edward Wood Dunham
Wiggin & Dana-NH
265 Church Street, P. O. Box 1832
New Haven, CT 06508-1832
(203) 498-4421
jdoroghazi@wiggin.com
edunham@wiggin.com

Joanne S. Faulkner
Law Offices of Joanne Faulkner
123 Avon Street
New Haven, CT 06511-2422
faulknerlawoffice@snet.net

Mark P. Kindall
Seth R. Klein
Izard Nobel, LLP
29 South Main Street
Suite 215
West Hartford, CT 06107
(860) 493-6292
(860) 493-6290 (fax)
firm@izardnobel.com
sklein@izardnobel.com

Anthony J. Majestro
Powell & Majestro, PLLC
405 Capitol Street, Suite P1200
Charleston, WV 25301
(304) 346-2889
(304) 346-2895 (fax)
amajestro@powellmajestro.com
David L. Marcus
Graves Bartle Marcus & Garrett, LLC
1100 Main Street, Suite 2700
Kansas City, MO 64105
(816) 256-4699
(816) 222-0534 (fax)

dmarcus@gbmgllaw.com

Joseph C. Merschman
Wiggin & Dana NH
265 Church Street, P. O. Box 1832
New Haven, CT 06508-1832
(203) 498-4323
jmerschman@wiggin.com

Jeffrey S. Nobel
Izard Nobel PC-Htfc
One Corporate Center
20 Church Street, Suite 1700
Hartford, CT 06103
(860) 493-6292
(860) 493-6290 (fax)
jnobel@izardnobel.com

Gary P. Sklaver
Licari, Walsh & Sklaver, LLC
105 Court Street
New Haven, CT 06511
(203) 752-1450
(203) 752-1401 (fax)
gsklaver@yahoo.com

David A. Slossberg
Hurwitz Sagarin Slossberg & Knuff, LLC
147 North Broad Street, P.O. Box 112
Milford, CT 06460-0112
(203) 877-8000
(203) 878-9800
dslossberg@hssklaw.com

C. Joseph Yast
DirectBuy, Inc.
8450 Broadway
Merrillville, IN 46410
(219) 648-7337
(219) 648-7339 (fax)
jyast@directbuy.com

Dated at Hartford, Connecticut, this the 12th day of April, 2011.

/s/ Matthew F. Fitzsimmons
Matthew F. Fitzsimmons (Bar No. ct26981)
Assistant Attorney General
110 Sherman Street
Hartford, Connecticut 06105
Tel: (860) 808-5400; Fax: (860)808-5593
Matthew.Fitzsimmons@ct.gov

EXHIBIT 1

Buy

MEMBERSHIP GUIDE

EXHIBIT
J

OUR VISION

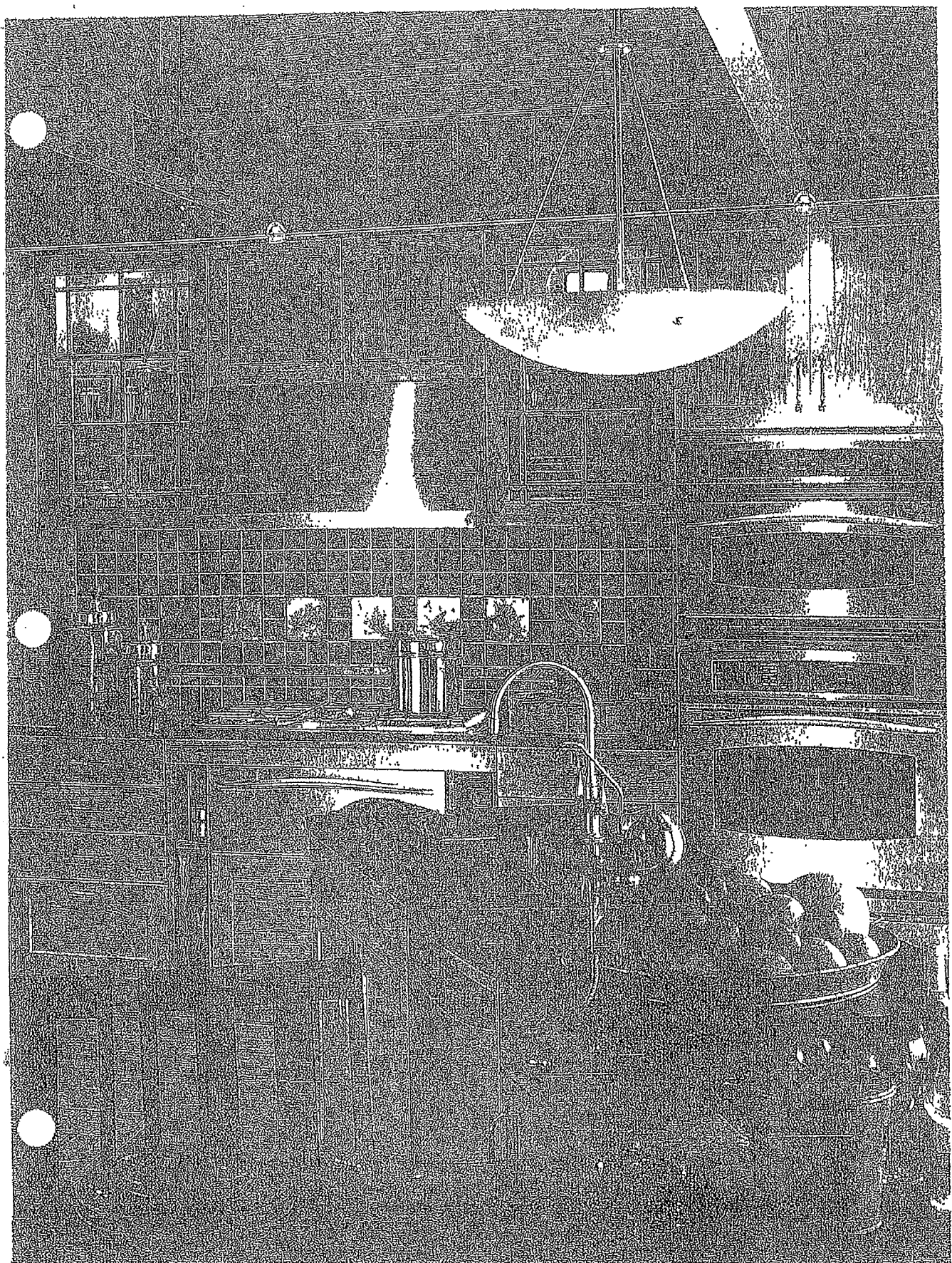
To be the recognized
international leader
in providing the
best alternative to
conventional retail buying.

RMV

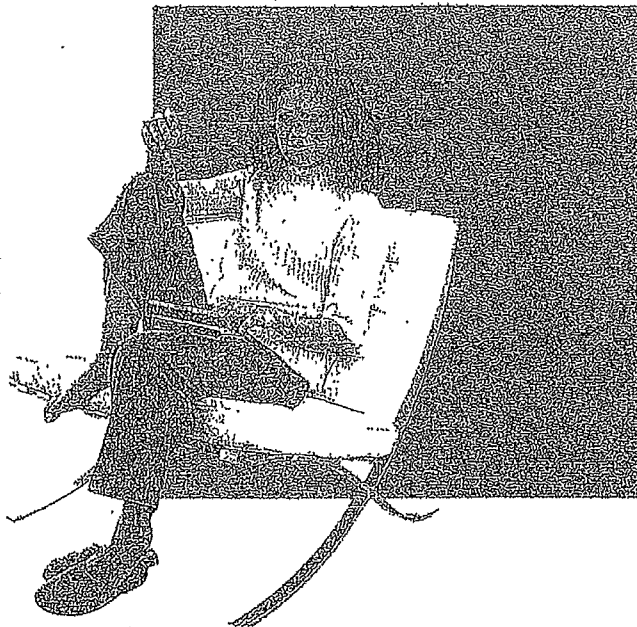


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WELCOME



One of our greatest pleasures is welcoming new members to our DirectBuy Club showroom. Since 1971, DirectBuy Club has been helping people, just like you, increase their buying power. By uniting consumers across North America through their local showrooms, DirectBuy Club has been able to provide members with outstanding value and incredible selection, while simplifying the shopping process at the same time.

We're pleased to welcome you to this new way of shopping. We promise to do our very best to help you enjoy all the benefits and privileges of your DirectBuy Club membership by complementing your savings with first class service.

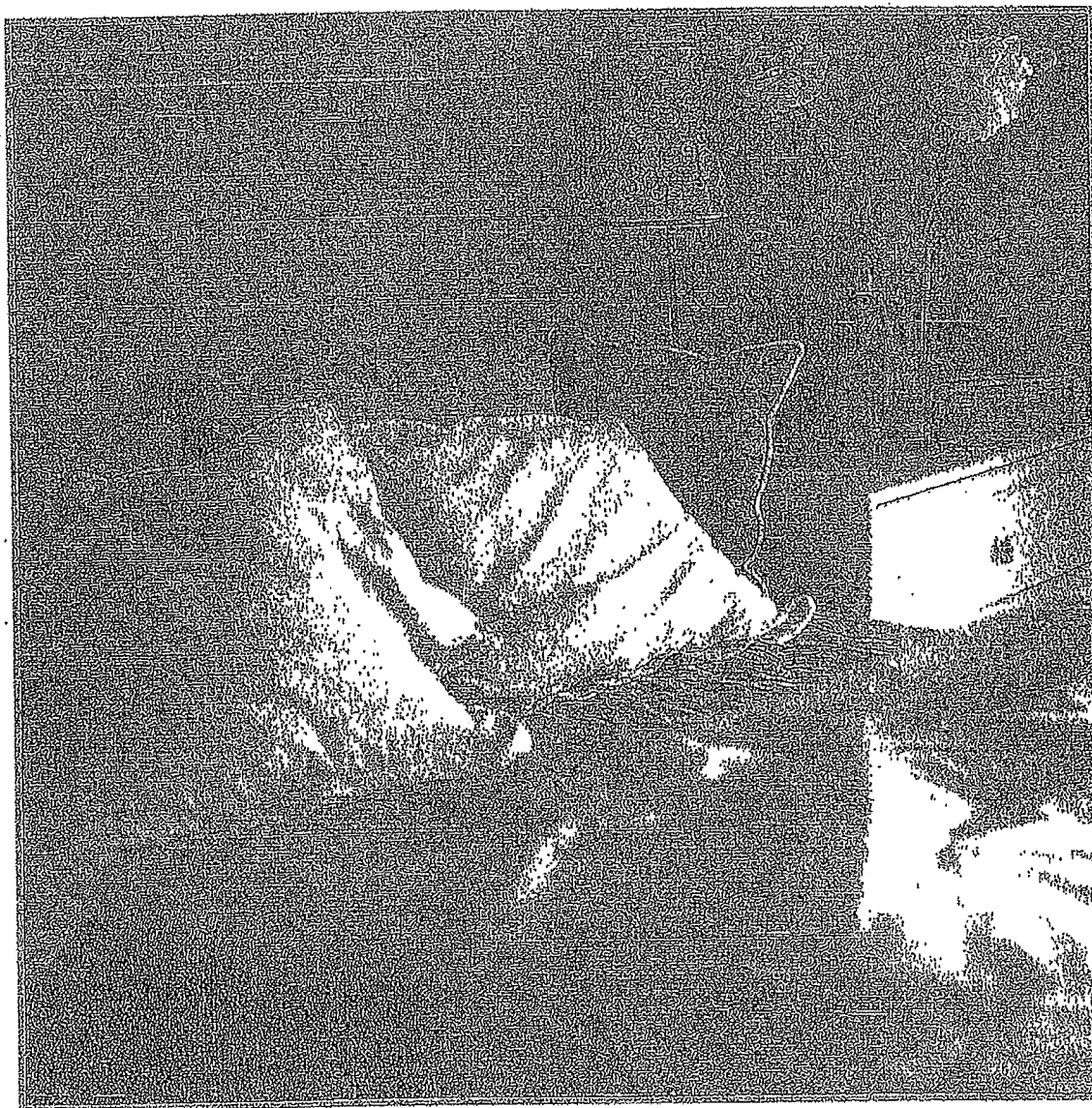
The information in this packet is designed to detail the benefits included with your membership, member rules and responsibilities, our policies and guarantees, as well as outline the ordering process, so that you can begin purchasing and saving money immediately. Please keep this booklet handy as a quick reference, and feel free to call us if you have any questions.

Most importantly, we ask you to remember that you now belong to a powerful consumer savings organization. Before you joined, you didn't have a choice; you simply had to pay whatever the stores wanted to charge. As a member of DirectBuy Club, you can now buy at insider prices from hundreds of brand-name manufacturers or their authorized suppliers, much like the stores buy. You know exactly what products cost. That's buying power! We look forward to seeing you soon.

ROLES

ROLES

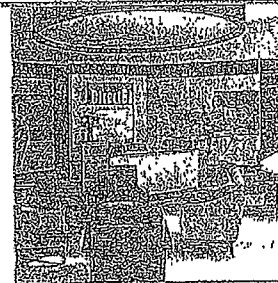
ORDERING
MERCHANDISE



HOME FURNISHINGS

FURNITURE Bedroom & Dining Room • Casual Dining • Mattresses • Infant. & Youth • Upholstered • Motion • Leather • Wicker & Rattan • Accent Furniture • Home Office HOME ACCENTS Window Treatments • Home Textiles • Bedding • Home Accessories • Clocks
Fireplace Furnishings • Lamps & Lighting • Ceiling Fans • Outdoor Lighting • Track Lighting • Table Top • Cookware • Kitchen Accessories

CLUB MEMBER BENEFITS



As a member of DirectBuy Club, you have access to all of the following:

FAMILY MEMBERSHIP

You, your spouse and your children, who are 18 years of age or younger and living at home, are automatically included in your DirectBuy Club membership and are welcome at the showroom anytime. In addition, dependent children who are full-time students are considered to be members until age 23.

LOCATIONS ACROSS NORTH AMERICA

As a member of DirectBuy Club, you're welcome to enjoy full membership benefits at this showroom as well as at all the other showrooms located throughout the United States and Canada. Simply show your membership card and a photo ID, and sign in. If you need contact information for any of our showrooms, please visit www.directbuycares.com.

SAVINGS

As members, you now have incredible buying power, and can experience thousands of dollars of savings by purchasing the things you want and need from the hundreds of thousands of brand-name items available through DirectBuy Club. You save because the DirectBuy Club system eliminates the hidden store markups and middlemen costs associated with conventional retail, discount, warehouse, outlet and Internet buying.

SELECTION

In addition to substantial savings, DirectBuy Club provides members access to an extraordinary selection of brand-name products and services. Your selection is not limited to just the items typically on display in retail stores. You can order directly from the manufacturers' and their authorized suppliers' catalogs, choosing from literally hundreds of thousands of options, including specialty and custom products. In many cases, you have access to their entire line, not just what a buyer thought the store could stock and sell.

DirectBuy Club provides its members the convenience of one-stop shopping. Now that you're a member, you no longer have to drive from store to store, checking prices on everything you need. It's all here at your local showroom. And because it's all in one place, shopping and coordinating your home decorating -- matching styles and colors of carpet and flooring, upholstery, wall and window coverings, furniture and appliances -- has never been easier!

CLUB MEMBER BENEFITS

LOCAL MERCHANT DISCOUNTS

Your membership qualifies you to receive discounts on goods and services outside of our showroom via our Local Merchant Discount program. For a complete listing of businesses participating in our Local Merchant Discount program, please contact a Product Specialist.

LOCAL PRODUCT SUPPLIERS

In addition to our extensive offering of national and international products, as a member, you'll also be able to extend your buying power to items that are most efficiently delivered on a local basis, like granite and building materials from local suppliers. Our Local Product Suppliers are featured along with our national and international suppliers, providing you the convenience of ordering merchandise from the comfort of our showroom. Please come in and ask us for all the details.

RELAXED SHOPPING ENVIRONMENT

DirectBuy Club is not open to the general public. As a member, you have the privilege of shopping in a private, relaxed, and comfortable environment. This means you can always be assured that our interest is in helping you order and receive exactly what you want and need.

QUALITY CONTROL INSPECTIONS

Just because members receive extraordinary savings when they shop using DirectBuy Club, it doesn't mean they have to sacrifice quality or settle for less! Members have access to quality products from hundreds of brand-name manufacturers and their authorized suppliers.

To help ensure that you receive everything you purchase in excellent condition, our merchandise receivers inspect your order when it arrives at our showroom. If any item is found to be damaged in transit, or defective from the supplier, we'll work with the shipping company or manufacturer to resolve the situation at no additional cost to you.

UCCD

To maintain the highest quality in the transportation of your orders, we have set up our own freight company, UCC Distribution. UCCD picks up merchandise directly from many of our manufacturers and delivers the products to your local showroom without the repeated loading and unloading in freight depots, which is common for carriers of general freight. It also delivers our members' products at freight rates below market, while still covering its costs and showing a modest profit. UCCD specializes in transportation of our members' home furnishings and home improvement items, which require higher degrees of care than general commercial freight - greatly reducing instances of freight damage and providing dependable delivery of merchandise.

HOME DELIVERY SERVICES

At DirectBuy, you'll find that some items can be shipped directly from the manufacturer to your home via UPS, Fed Ex, or other courier. At the time you place your order, ask your Product Specialist if this option is available for the merchandise you are purchasing. If not, the item will be shipped to the showroom and inspected, at which time you'll be contacted to pick up the item, or, if you wish, you can take advantage of the showroom's local delivery service.

LOCAL CONTRACTORS AND INSTALLERS

Your membership benefits don't end after the merchandise has been delivered to your local showroom or home. DirectBuy's Local Contractors and Installers provide members with an extensive list of professional services. Please contact a Product Specialist for all of the details.

CLUB MEMBER BENEFITS

WARRANTIES

All available manufacturer warranties apply to products purchased through DirectBuy Club. Consequently, it's important to complete any merchandise warranty or guarantee documents that the manufacturer provides as soon as you receive your merchandise. Completing and mailing the necessary forms as soon as possible helps ensure that your merchandise is covered.

If any problem develops while your product is still under warranty, contact us immediately, and a Product Specialist will be happy to help you contact the manufacturer's warranty center.

Warranty periods and items covered vary by manufacturer. Refer to the manufacturer's catalog and price list for stated warranty policies, and to any warranty or guarantee documents enclosed with your merchandise. Additional warranty coverage may be available on selected items at participating showrooms. Contact our Product Specialists for more information.

DIRECTION® CATALOG

As part of your membership, you will receive the members-only Direction catalog each quarter. This popular publication features a wide selection of merchandise available for purchasing through your local showroom. These are often exclusive promotions, new product introductions or limited-time price reductions. As an added benefit, some products from Direction can be ordered online at members.directbuy.com. If you have questions about when you will receive your first catalog, please contact a member of our service team.

ONLINE SHOPPING CONVENIENCES

Members.directbuy.com combines the convenience of home shopping with the tremendous savings that DirectBuy Club delivers. Via the website, members can order most items featured in the quarterly Direction catalog; find showrooms throughout North America; become acquainted with category and supplier lists; browse through nearly the entire Manufacturer's Library via the Virtual Showroom; renew your membership; update your contact information; stay in touch with our showroom; and read remodeling, decorating, and renovation DIY tips from the experts. If you need assistance accessing your online account, please contact the DirectBuy Club technical support department at technicalsupport@directbuy.com.

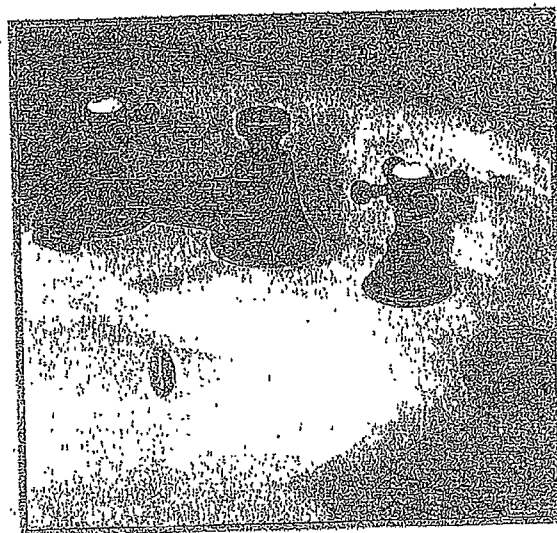
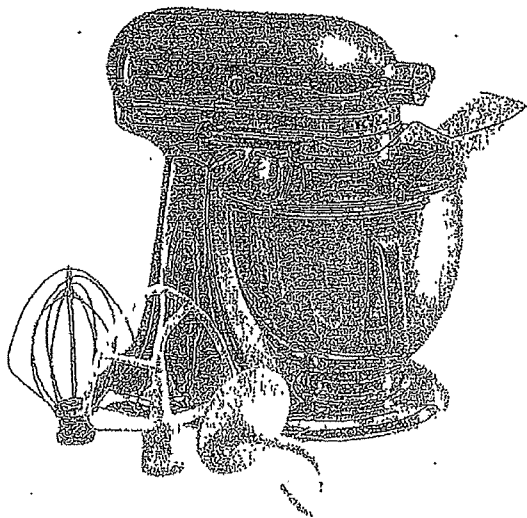
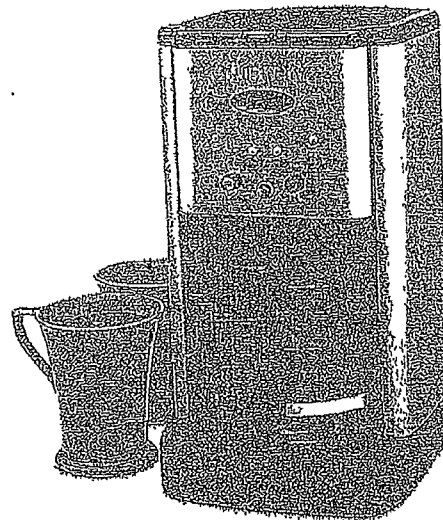
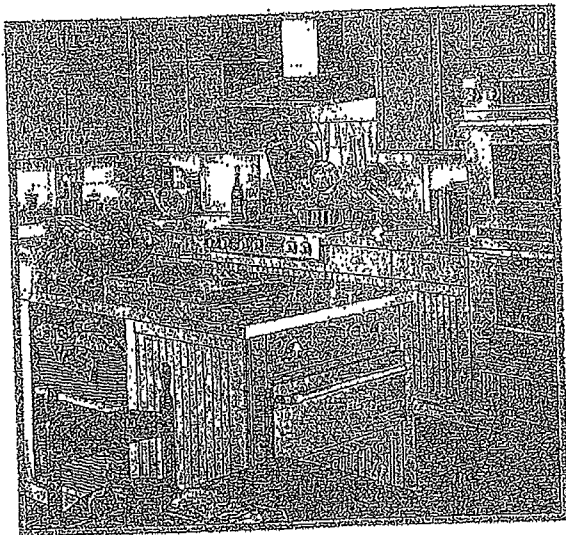
MEMBERSHIP REFERRALS

The benefits of DirectBuy Club don't stop at unmatched savings, exceptional selection and personalized customer service. As a member, it's easy to share DirectBuy Club with your friends and family, and earn big rewards in the process. Visit refer.directbuy.com today for all the details!

MEMBERSHIP RENEWAL

Renewing your membership after your initial membership period will allow you to continue to enjoy the many benefits of DirectBuy Club. Payment of the annual renewal fee is due prior to the expiration of your current membership term. Your membership can be renewed via mail, phone, or online at members.directbuy.com.

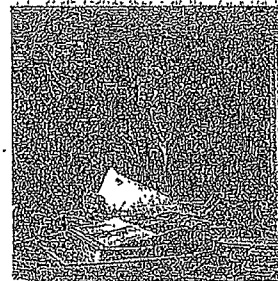
You'll receive advance notification of your upcoming renewal date, allowing you ample time to continue your membership privileges without interruption.



HOME IMPROVEMENT

KITCHEN & BATH Cabinetry • Plumbing & Fixtures APPLIANCES Large Appliances • Small Appliances • Vacuum Cleaners • Sewing Machines • Health Care HARDWARE Windows & Doors • Locksets & Security • Garage • Storage Systems • Automotive Accessories • Tools BUILDING SUPPLIES Trim & Molding • Log Cabin Kits • Gutter Protection • Furnaces and Air Conditioners • Electrical WALLPAPER

M E M B E R S H I P



As a member of DirectBuy Club, you belong to an organization dedicated to helping you enjoy a higher-quality lifestyle. In order to ensure that we're able to continue offering you the advantages and benefits of membership, it's important that you agree to and honor the following terms:

Each time you visit your showroom, you must show your DirectBuy Club membership card and photo identification to check in. You should receive your new membership card(s) from the DirectBuy Corporate Support Center within two to four weeks after you join. If you'd like to access a DirectBuy Club showroom before you receive your membership card, you may use your Membership Agreement.

We use membership cards to monitor access to DirectBuy Club showrooms, and therefore, we cannot permit you to loan or give your membership card to anyone else. If you lose your membership card or it is stolen, please call us right away, so we can issue you a replacement.

In order to maintain our club as an exclusive Members-Only showroom, we cannot allow guests or other non-members to enter the showroom or use the catalogs. You may, however, make arrangements with us in advance if you would like to visit the club with your designer and/or contractor (see our Designer/Contractor Policy for more details). If you know someone who would be interested in DirectBuy Club membership, please contact one of our managers or staff, who will be pleased to make all the proper arrangements. Or, simply enter their name and email address at refer.directbuy.com, and when they join, you'll earn big rewards as our way of saying "thanks!"

Because the process of purchasing through DirectBuy Club is different than mainstream retail purchasing, Member Orientations are conducted on a regular basis to help new and existing members maximize their DirectBuy Club membership. Members are encouraged to attend an Orientation prior to shopping for merchandise. Should you require additional assistance, please contact our showroom to set up a personal appointment.

MEMBERSHIP

To make shopping easier, you may bring your interior designer and/or contractor (also referred to as "home design professional") into the showroom to assist you with design decisions and product selection, so long as you agree to follow a few simple guidelines:

1. Set an appointment. Give the showroom a call a few days before you'd like to come in.
2. Accompany your home design professional to the showroom. Your home design professional won't be allowed access to the showroom without your presence.
3. Bring proof of your home design professional's credentials. Upon arrival at the showroom, the receptionist will ask for your home design professional's business card to establish his or her credentials. For example, your designer/contractor should be a professional member, and/or own or be associated with an established business.
4. Have a seat in the designated area for members and their home design professionals. After you arrive, you'll be asked to sit in a designated area in view of service staff members.
5. Keep pricing confidential. Although interior designers and contractors may be allowed into the showroom, privileged access to confidential materials, such as catalogs and price lists, should be limited and carefully controlled. To protect our valued manufacturer relationships, only you will be given access to confidential price lists.
 - When you find a catalog that you would like to look at with your home design professional, take it to the Product Specialist, so he or she can remove the confidential price lists. Then you may take the catalogs and/or samples to the designated area for your home design professional to work with.
 - If you choose to order from a catalog, you may do so at the Ordering Station in the usual manner. However, your home design professional cannot be given access to pricing during the process.

Our manufacturers and their authorized suppliers have every right to expect their confidential price lists won't be divulged to the public or used as bargaining leverage with retail stores. You agree to keep the product and pricing information, to which you have privileged access, completely confidential.

As a member, you agree to only purchase items:

1. For your personal use;
2. For the use of your immediate family (see Family Membership, page 3); and
3. As bona fide gifts. For gift purchases totaling more than \$500, you'll be required to obtain approval prior to order placement. Please contact the showroom for details.

To maintain the quality and selection of manufacturers offered at DirectBuy Club, you agree that you will not purchase items for commercial use or resale.

MEMBERSHIP RULES & RESPONSIBILITIES

NEVER USE RETAIL PRIVILEGES

The continuing growth and power of DirectBuy Club, and the increasing value of your membership is, in part, linked to our treating the retail community with respect, and not misusing the confidential information entrusted to us. With this in mind, you agree to the following:

- Never use confidential prices, or the Direction catalog, to negotiate with stores.
- Never shop a store knowing you're going to buy through DirectBuy Club.
- Never use retail personnel, or their services, unless you intend to buy from them.

There's plenty of business for everyone. Following these simple rules will protect the privilege of your membership.

DO NOT CONTACT SUPPLIERS

As a member of DirectBuy Club, you agree not to contact a supplier unless otherwise instructed by a Product Specialist from this showroom. Our manufacturers and suppliers deal with the DirectBuy Corporate Support Center as one account. They aren't equipped to respond to direct inquiries from members. Our Product Specialists and the Corporate Support Center staff have received special training to be effective in providing service to members. Please allow them to work on your behalf.

PLEASE NOTIFY US OF ANY CHANGE IN YOUR NAME, ADDRESS, PHONE NUMBER OR EMAIL ADDRESS

Please notify us of any change in your name, address, phone number or email address. This information is used to keep in contact with you when purchases arrive, and to send you news and membership renewal information.

If you're moving to a new community, please contact us for assistance in finding the location closest to your new home, or contact the DirectBuy Corporate Support Center at:

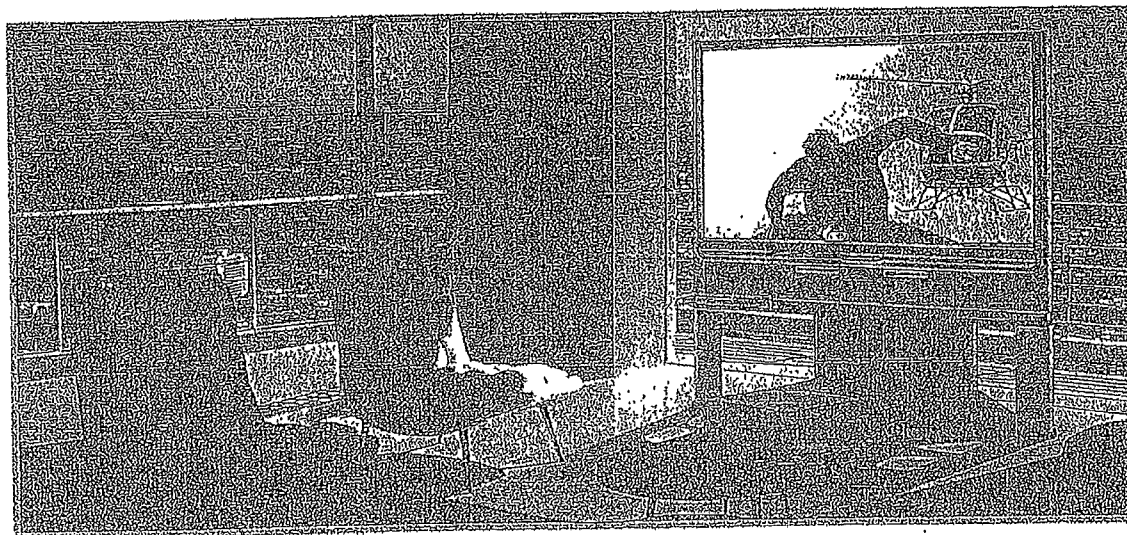
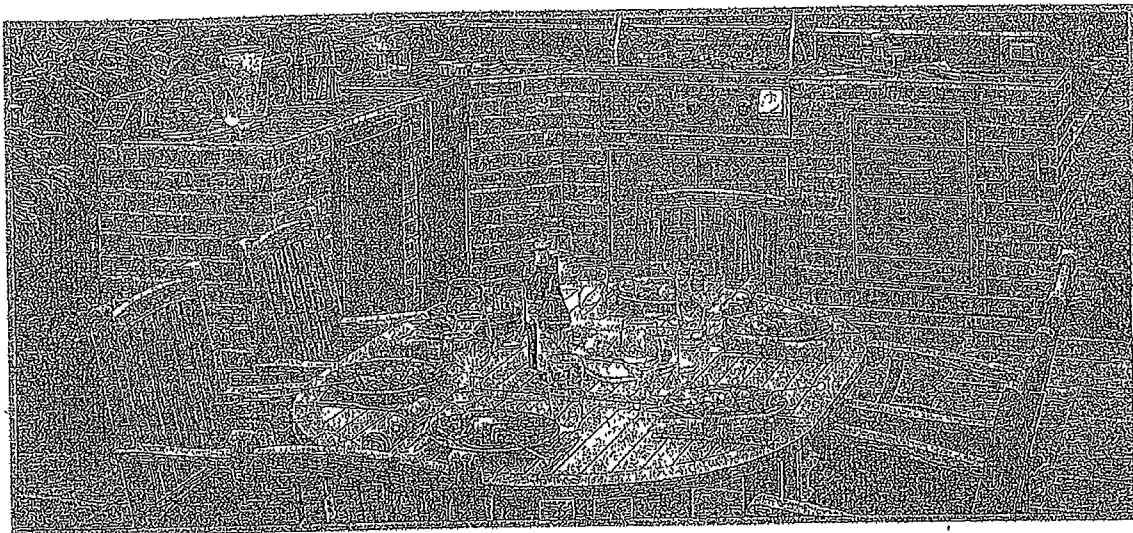
DirectBuy, Inc.
Attention: Membership Department
8450 Broadway, P.O. Box 13006
Merrillville, IN 46411-3006
Tel: (800) 827-6400

If you marry after becoming a member, simply provide documentation (marriage certificate) so that your spouse can be granted membership privileges and receive his or her own membership card.

Because there's only one Membership Agreement, in the case of a divorce, the first name on the first line of the agreement retains the membership, unless otherwise provided in the divorce disposition. For further guidelines on this situation, please check with the owner or manager of our showroom.

WE RESERVE THE RIGHT TO REVOKE OR SUSPEND YOUR MEMBERSHIP

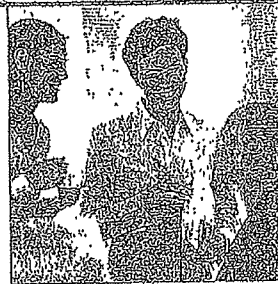
You agree that we may revoke or suspend your DirectBuy Club membership if you fail to abide by these promises, if you otherwise fail to follow the Member Rules or to fulfill your Member Responsibilities, or if you engage in disruptive, rude, abusive, or otherwise unprofessional personal misconduct at our club or in dealing with our staff.



ENTERTAINMENT & OUTDOOR

SPORTS & LEISURE Game Tables • Sporting Goods • Recreational • Fitness Equipment • Toys
ELECTRONICS Home Theater Audio & Speakers • Electronic Accessories • Cameras & Accessories • Home Office • Electronics • Automotive Electronics • Gadgets
OUTDOOR LIVING Outdoor Furniture • Garden Décor • Fencing & Decking • Grills & Accessories • Lawn Care • Storage

P O L I C I E S



Just as you agree to abide by certain rules and terms as a member of DirectBuy Club, we also agree to uphold the following standards and practices:

MEMBER GUARANTEE - SAVINGS

DirectBuy Club delivers tremendous savings opportunities by eliminating traditional retail markups.

PRICING PROMISE

DirectBuy Club conducts proactive retail price comparison studies to ensure that our members experience maximum savings. While DirectBuy Club doesn't guarantee to always have the lowest price, if you should ever find a lower price from a legitimate, local retailer on an identical item that is currently available from a DirectBuy Club supplier, even if it's an "advertised special," we will work with the supplier to obtain the best possible price as quickly as possible.

COMPETITIVE PRICING ACKNOWLEDGMENT

Some products such as electronics and appliances are often competitively priced amongst retailers. For this reason, when DirectBuy Club determines that some suppliers' products may be purchased through retail stores at similar prices, we notify our members by labeling the front of the supplier catalog with a "Marginal Savings" identifier.

MEMBER GUARANTEE - SELECTION

DirectBuy Club provides its members with an extensive collection of top manufacturers (more than 700 in the United States, and more than 500 in Canada), including many of the leading brands in furnishings, home improvement, flooring, entertainment and outdoor, and accessories.

SELECTION GUARANTEE

DirectBuy's professional buyers continually strive to provide members direct access to the product lines from a wide variety of the most popular manufacturers and suppliers in North America. While we don't carry every manufacturer or every product available from a manufacturer, we do promise to carry an extensive selection of merchandise for in and around your home, at a range of price levels. If you are unable to find a specific brand or product, we'll attempt to find a comparable alternative from the hundreds of thousands of other products we carry.

P O L I C I E S

MEMBER GUARANTEE - SERVICE

Satisfaction of our members is our number-one priority. To ensure our members receive a consistent shopping experience, all of our showrooms across North America uphold and honor the following guarantees:

HOURS OF OPERATION

Each DirectBuy Club showroom offers convenient shopping and merchandise pick-up hours for members. When you join DirectBuy Club, you will be informed of these hours, and notified of any changes. The hours of operation, and holiday hours, are also on each showroom's voicemail system, the entrance to the showroom, and online. If you visit another DirectBuy Club showroom, please call that club ahead of time to verify their hours of operation.

SHOPPING ASSISTANCE

DirectBuy Club strives to make shopping and ordering merchandise as simple and efficient as possible through the following:

- Product Directories – Each showroom is arranged to make finding general product categories easy, with a showroom directory located near the front of each showroom, and signs, icons, and color-coding clearly labeling each section.
- Manufacturer Reference Guides – Members have access to additional resources, including the Manufacturer Reference Guide, which enables members to search for items by Manufacturer name.
- Product Index – In addition to the Manufacturer Reference Guide, members can use the Product Index to search for merchandise by type of product.
- Product Specialists – In every showroom, DirectBuy Club employs Product Specialists who are specially trained in each of the five major categories of merchandise to assist members with finding, pricing, and ordering items.
- Design Services – Every showroom offers various design services to help members complete their projects. If you have questions about the services available in your area, please contact a staff member at our showroom.
- Members.directbuy.com – DirectBuy's members-only website features most every product featured in our Manufacturer's Library, enabling members to browse from the comfort of their homes, and create "Wish Lists" that can then be accessed at a kiosk inside the showroom. Should you have any questions about members.directbuy.com, or about any of the tools described above, please contact our service staff.

MINIMUM ORDER AMOUNTS

There are a few suppliers who require that your order meets a minimum dollar amount and/or a minimum number of items.

If you wish to order less than the minimum, it may be possible to combine your order with the orders of other members to meet the manufacturer's minimum. If you're interested, simply request information from our Product Specialists.

P O L I C I E S

SHIPPING & HANDLING COSTS EDUCATION

To ensure full disclosure of shipping and handling costs associated with orders, DirectBuy Club adheres to the following practices and procedures prior to, during, and after membership enrollment:

- Prior to Enrollment – Prospective members are required to attend an Open House, where a standardized video tour explains the shipping and handling costs associated with each order. Additionally, all price comparisons shown during the tour include applicable shipping and handling charges.
- During Enrollment – During the enrollment process, members review and agree to a membership guide, which is part of the Membership Agreement, that details shipping and handling costs (see Ordering Process, Charges Applied to Order)
- After Enrollment – After joining DirectBuy Club, members are encouraged to attend a New Member Orientation, in which shipping and handling costs are re-explained. When members are shopping for merchandise, they'll find a Supplier Information page in the front of each catalog detailing the costs associated with the corresponding manufacturer. When placing an order, members will receive a full explanation of the costs associated with the order, including shipping and handling. Members review the purchase order for accuracy, sign their authorization for the order to be placed as displayed on the purchase order, and pay the amount due at the time the order is placed. At this time, members receive a copy of the purchase order for their files.

If you have additional questions regarding shipping and handling, our Product Specialists will be happy to assist you.

SUPPLIER SHIPPING TIMES

DirectBuy provides estimated shipping times based on each supplier's shipping history. These estimated shipping times can be found on the Supplier Information Sheet in each catalog and will be fully explained by Product Specialists at the time of order placement. Because shipping times are dependent upon the supplier's inventory and/or production schedules, DirectBuy Club cannot guarantee specific delivery dates or offer compensation for unforeseen delays. If you have questions regarding shipping times, please contact a Product Specialist.

PRODUCT AVAILABILITY

The manufacturers represented in DirectBuy showrooms are continuously adding new products to their lines and discontinuing older models. DirectBuy Club receives updates weekly from suppliers and distributes this information to showrooms to ensure product catalogs are up-to-date and accurate for members.

If a product or supplier is discontinued during the selection process, DirectBuy Club will attempt to find an acceptable replacement product.

If a product is discontinued after you've placed an order, DirectBuy Club will work with the supplier in an attempt to find an acceptable replacement product or, if you prefer, cancel the order and provide a full refund on the item.

DirectBuy's Product Specialists will gladly respond to any inquiries regarding product availability.

POLICIES

PRICING ADJUSTMENTS

If there's a change in the price of the merchandise between the time the order is placed and the time of the shipment, the total cost of the order will be adjusted accordingly. In this situation, a refund or bill for the difference will be issued as follows:

If the cost of an item increases, and the increase is less than 10 percent of the merchandise price and less than \$100, the order will be processed, and you'll receive an invoice for the difference, if the difference is more than a billing minimum set by our showroom.

If the cost of an item increases, and the increase is more than 10 percent of the merchandise price, but less than \$100, you'll be contacted for your approval of the increase. If you approve the increase, you'll receive an invoice for the difference, if the difference is more than a billing minimum set by our showroom. If you don't approve the order, a Product Specialist will make a cancellation request for you.

If the cost of an item increases, and the increase is more than \$100, you'll be contacted for your approval of the increase. If you approve the increase, the difference will be due at that time. If you don't approve the order, a Product Specialist will make a cancellation request for you.

CANCELING AN ORDER

It may be possible to cancel an order, providing the supplier hasn't yet processed the purchase order. If you want to request cancellation of an order, contact a Product Specialist as soon as possible.

Once a supplier receives a purchase order, the option to accept cancellation of the order is entirely their decision. If you wish to cancel an order that has already been received by a supplier, a Product Specialist will make the request for you. A Product Specialist will notify you when the supplier responds.

GENERAL INQUIRIES

If you have any questions about your DirectBuy Club membership, contact your local showroom. You will receive a response to your inquiry within two business days. Contact information can be found on members.directbuy.com.

POLICIES

REFUNDS & RETURN POLICY

MERCHANDISE RETURNS AND REFUNDS

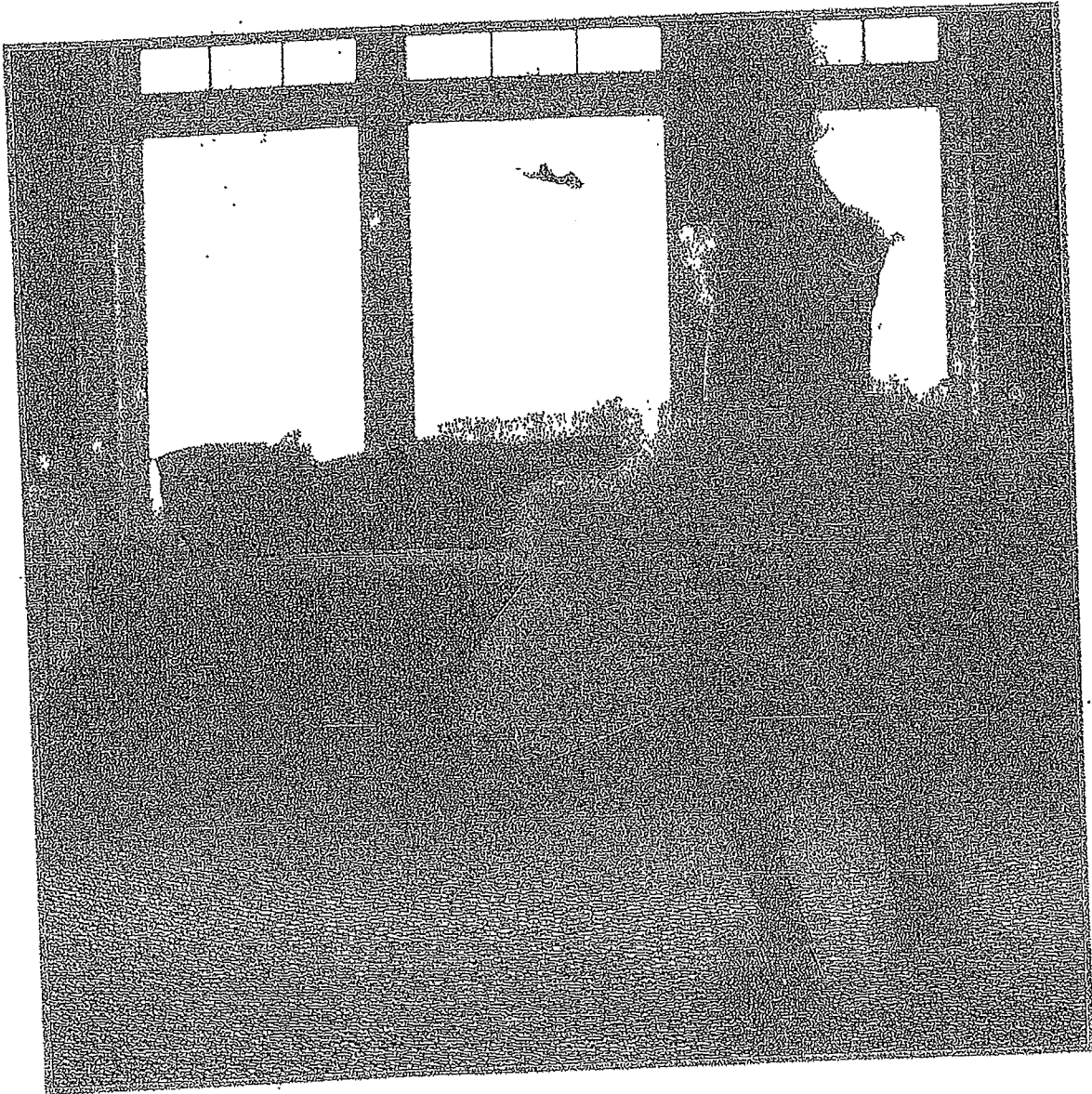
DirectBuy Club guarantees that members receive only first-quality merchandise free from damage and/or defect. As such, DirectBuy Club does not offer returns on merchandise that is delivered free from damage and/or defect, and adequately represents the corresponding purchase order.

However, some manufacturers will accept returns in accordance with their own return policies, in which restocking and freight charges may apply. If you wish to request the return of an item, DirectBuy Club will work with the manufacturer to obtain a Return Authorization, and, if accepted, a refund will be issued when DirectBuy Club has received credit for the product.

MEMBERSHIP RETURNS & REFUNDS

DirectBuy Club complies with all state and provincial regulations and requirements in respect to the cancellation of your membership agreement.

Beyond such regulations and requirements, it is not our policy to refund a membership as a result of a member's failure to follow-through on previously anticipated purchases. In the event you experience difficulty realizing the full benefits of membership, DirectBuy Club will work to resolve your issue(s) in accordance with our Membership Policies.



FLOORING

Carpet • Area Rugs • Commercial Carpet • Tile • Hardwood • Laminate • Resilient Flooring

ORDERING



We work hard to provide our members with privileged access to all of the products and services offered through DirectBuy Club. We've designed a standardized ordering process that efficiently interfaces with our manufacturers and their authorized suppliers, while providing members an outstanding selection of merchandise.

Our showroom maintains a confidential Manufacturers Library that houses a broad selection of catalogs featuring an incredible variety of items. The catalogs are updated frequently by our staff to include the latest available information. They're arranged by product categories to assist you in finding the products you need.

If you're shopping for products from a specific manufacturer, you can go directly to their catalog, the Manufacturer Reference Guide or members.directbuy.com.

If you're looking for a specific product and you'd like to see what's available from a range of manufacturers, feel free to browse through the Manufacturers Library, page through the Manufacturer Reference and Product Index Guides, or use the members-only website. You'll be amazed at the selection of manufacturers and products available.

On the front of each catalog, you'll notice one of five different price range codes.

Economically-priced merchandise.

Quality merchandise at a mid-range price.

Merchandise exclusive to high-end manufacturers.

Wide selection with prices ranging from mid-range to high-end lines of merchandise.

ORDERING

This phrase is indicated on some catalog labels in addition to the price range code. Some items in this catalog may be purchased elsewhere at similar prices for the following reasons:

- Loss Leader Sales — Stores offer select items at or below cost for a limited time frame to attract customers in order to sell them other products that contain a greater profit margin.
- Additional Profit Opportunities — Stores offer some products at a minimal markup but offer additional services (extended warranties, for example) at a profit.
- Volume Purchasing — Stores purchase large quantities of a specific item, which allows for additional discounting.

NOTE: Be sure to compare exact specifications. Many products may look similar but have different product specifications, for example, discontinued items or items produced to the store's specifications.

Inside each catalog, you'll find a Supplier Information Sheet. The Supplier Information Sheet contains additional ordering information, such as minimum order guidelines, whether the merchandise is combined into standard packs, where the merchandise ships from, estimated shipping times from the manufacturer, and much more. If you have additional questions regarding the Supplier Information Sheet, please see a Product Specialist.

At the back of each catalog, you'll find the manufacturer's and/or supplier's confidential price list. If retail prices are shown in the catalog, they're the manufacturer's "suggested" retail prices. (Local retailers may actually charge higher or lower prices for the items.) Please remember that this information is confidential and is not to be divulged outside of the showroom or to non-members.

The pricing shown in the Confidential Price List is the pricing given to DirectBuy Club from the manufacturer or supplier. DirectBuy Club does not charge mark-up on the merchandise. DirectBuy's Corporate Headquarters and Franchisees reserve the right to accept prompt payment discounts and other incentives from suppliers, so long as pricing available to members is not adversely affected.

When you've made your selection; take the catalog and/or pre-order form to a Product Specialist. The Product Specialist will assist you in completing your purchase order.

In addition to choosing a specific model, members will often have the opportunity to specify finish, color, fabric, or other custom feature combinations.

DIRECTBUY CLUB
MEMBERSHIP

ORDERING

We take extra care to ensure that our members get exactly what they want and need. After the Product Specialist enters the information for your order, it's important for you to review it. Your signature authorizes us to process your purchase order.

After you sign the purchase order, you can pay by check, debit, or credit card for the estimated total. Our Product Specialist will give you a copy of your purchase order. You can refer to this copy should you have any questions about your order in the future.

Via members.directbuy.com, you can order products featured in the current Direction® catalog by simply using your Visa® or MasterCard®.

In addition to the manufacturer's or authorized supplier's prices listed in the catalog, your payment will include the following charges, if applicable:

- Manufacturer's Service Charge
- Handling Fees
- Freight Charges
- State and Local Taxes

Our Product Specialists will calculate these costs and fees for you when you order. If you have any questions about a charge, please don't hesitate to ask.

A few manufacturers apply a service charge to cover their cost to pack and handle items that need special care. This charge doesn't apply to most items.

This fee offsets the cost of processing and handling your order. The applicable handling fee will be noted on the supplier information sheet in the manufacturer's catalog. The handling fee will never exceed 8%.

We work hard to find the most inexpensive and timely method of shipment. At the time you place your order, ask the Product Specialist to review your delivery options, if applicable. Many items are available for home delivery direct from the manufacturer.

Based on local requirements, applicable taxes will be added to your order. The advantage is that you'll be paying taxes on our insider prices through DirectBuy®, not marked-up store prices.

ORDERING INFORMATION

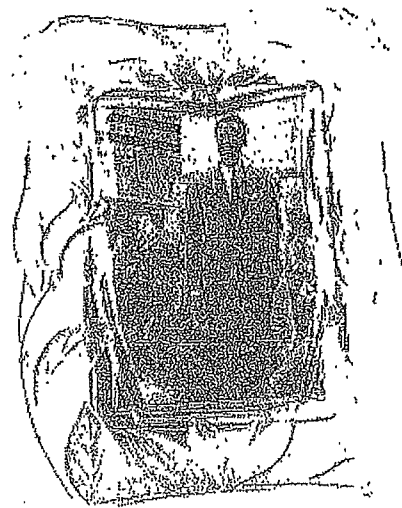
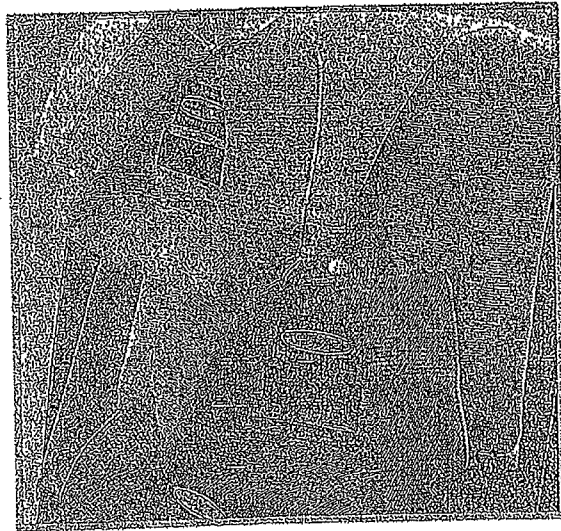
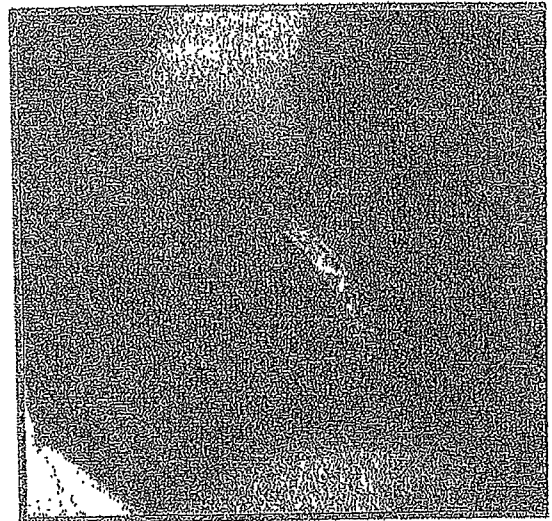
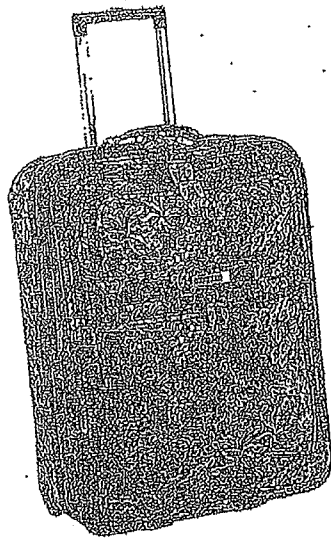
DELIVERY AND PICK-UP

Upon arrival of your merchandise at our local showroom, a Merchandise Receiver will inspect your order to ensure it was delivered free from damage and/or defect. Then our showroom personnel will let you know that your merchandise is available for pick-up or delivery (fees may apply). Upon pick-up or home delivery of the merchandise, you are required to sign a copy of the PO acknowledging you received your merchandise in good condition, and releasing DirectBuy Club from any further product claims.

In the unlikely case that an item is found to be damaged in transit, or defective from the supplier, we'll work with the shipping company or the manufacturer to resolve the situation to your satisfaction at no additional cost to you. If an item has to be reordered, the same delivery time noted in the catalog will apply from the date of the reorder.

To help us provide the best service to all of our members, please pick up or arrange for delivery of your merchandise within the time frame specified by the showroom. Contact us for details.

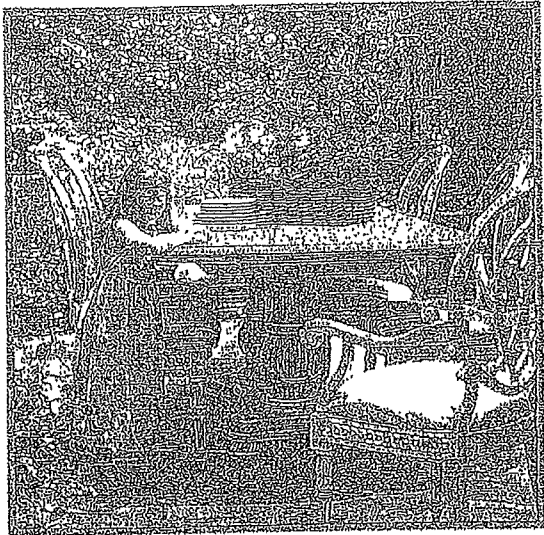
ORDERING INFORMATION
DIRECTBUY CLUB



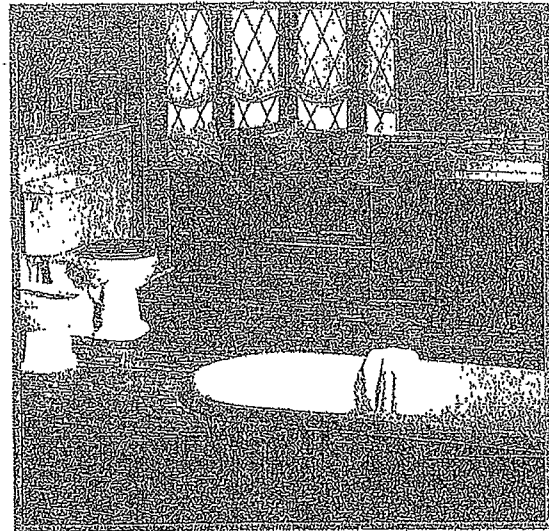
ACCESSORIES

Jewelry • Watches • Giftware • Stationery • Luggage • Apparel

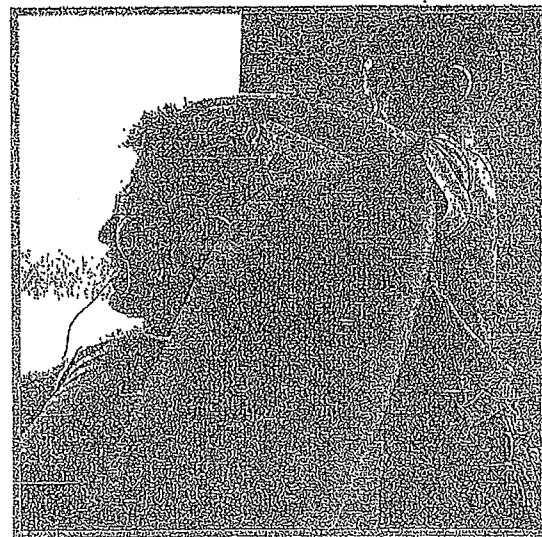
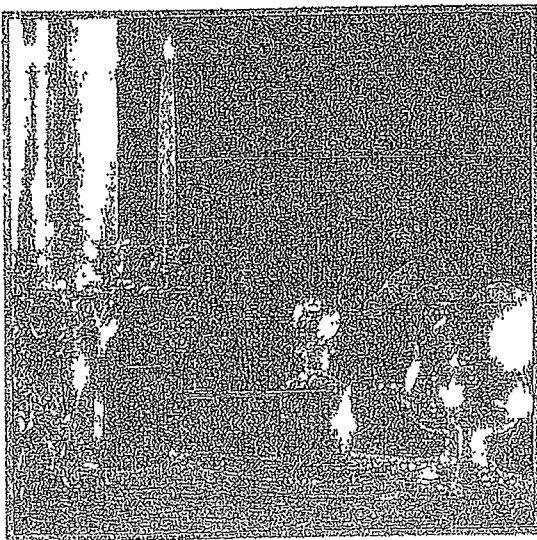
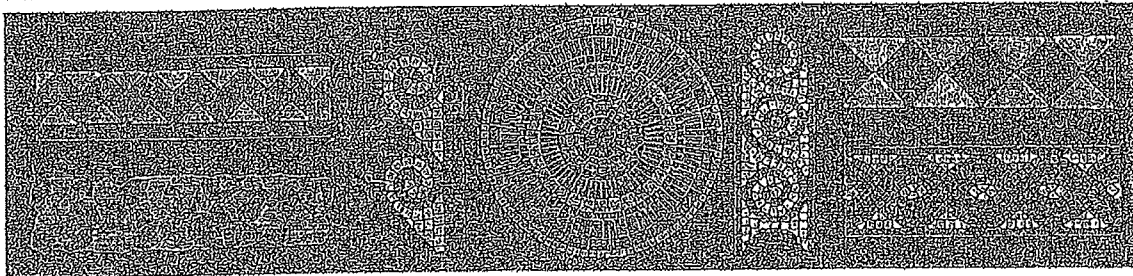
HOME FURNISHINGS



HOME FURNISHINGS



FLOORING



ACCESSORIES

ACCESSORIES

WORKING HANDS

DIRECTORY

HOME ACCENTS

FURNITURE

- | | |
|---------------------------|----------------------|
| 1.1 Bedroom & Dining Room | 1.6 Motion |
| 1.2 Casual Dining | 1.7 Leather |
| 1.3 Mattresses | 1.8 Wicker & Rattan |
| 1.4 Infant & Youth | 1.9 Accent Furniture |
| 1.5 Upholstered | 1.10 Home Office |

HOME ACCENTS

- | | |
|---------------------------|--------------------------|
| 2.1 Window Treatments | 2.8 Ceiling Fans |
| 2.2 Home Textiles | 2.9 Outdoor Lighting |
| 2.3 Bedding | 2.10 Track Lighting |
| 2.4 Home Accessories | 2.11 Table, Top |
| 2.5 Clocks | 2.12 Cookware |
| 2.6 Fireplace Furnishings | 2.13 Kitchen Accessories |
| 2.7 Lamps & Lighting | |

HOME IMPROVEMENT

KITCHEN & BATH

- 1.1 Cabinetry
- 1.2 Plumbing & Fixtures

WALLPAPER

- 2.1 Wallpaper

APPLIANCES

- 3.1 Large Appliances
- 3.2 Small Appliances
- 3.3 Vacuum Cleaners
- 3.4 Sewing Machines
- 3.5 Health Care

HARDWARE

- 4.1 Windows & Doors
- 4.2 Locksets & Security
- 4.3 Garage
- 4.4 Storage Systems
- 4.5 Automotive Accessories
- 4.6 Tools

BUILDING SUPPLIES

- 5.1 Trim & Molding
- 5.2 Log Cabin Kits
- 5.3 Gutter Protection
- 5.4 Furnaces and Air Conditioners
- 5.5 Electrical

ENTERTAINMENT & OUTDOOR

SPORTS & LEISURE

- 1.1 Game Tables
- 1.2 Sporting Goods
- 1.3 Recreational
- 1.4 Fitness Equipment
- 1.5 Toys

ELECTRONICS

- 2.1 Home Theater
- 2.2 Audio & Speakers
- 2.3 Electronic Accessories
- 2.4 Cameras & Accessories
- 2.5 Home Office Electronics
- 2.6 Automotive Electronics
- 2.7 Gadgetry

OUTDOOR LIVING

- 3.1 Outdoor Furniture
- 3.2 Garden Décor
- 3.3 Fencing & Decking
- 3.4 Grills & Accessories
- 3.5 Lawn Care
- 3.6 Storage

FLOORING

- | | |
|-----------------------|------------------------|
| 1.1 Carpet | 1.5 Hardwood |
| 1.2 Area Rugs | 1.6 Laminate |
| 1.3 Commercial Carpet | 1.7 Resilient Flooring |
| 1.4 Tile | |

ACCESSORIES

- | | |
|--------------|----------------|
| 1.1 Jewelry | 1.4 Stationery |
| 1.2 Watches | 1.5 Luggage |
| 1.3 Giftware | 1.6 Apparel |

To Our Valued Members

DirectBuy® Club offers its Members an unprecedented service based on the following rules:

Our Showroom and Catalogs Are for Members Only

- Non-members may not enter the Showroom or use the catalogs.
- Your Membership includes your spouse and dependent children age 18 who live at home, and dependent full-time students to age 23.

Pricing Information Is Confidential

- Confidential pricing information is for use inside the Showroom only.
- Pricing and catalogs may not be copied or taken outside the Showroom, or disclosed to non-members.

Buy For Yourself and Your Family

- Purchasing items on behalf of others, or for resale, is not permitted.
- Purchasing gifts to present to family and friends is encouraged.

Respect the Retail Community

- Never use confidential prices, or the Direction® catalog, to negotiate with stores.
- Never shop a store knowing you're going to buy through DirectBuy Club.
- Never use retail personnel, or their services, unless you intend to buy from them.

Call Us for Information, Not Suppliers

- Suppliers are not prepared to handle questions about orders directly from Members. However, many suppliers do have websites with comprehensive product information.
- For order status and product inquiries, contact the showroom.

Protect the Privilege of Your DirectBuy Club Membership

COLLECTIVE EXHIBIT 2

ITEM 4

BANKRUPTCY

No bankruptcy information is required to be disclosed in this Item.

ITEM 5

INITIAL FEES

The initial franchise fee we charge you is \$75,000 and is nonrefundable, except as noted below. The initial franchise fee includes our standard initial operation package, which consists of an initial inventory of forms and supplies (this package does not include any display merchandise, showroom fixtures, or signs or graphics, which you have to buy yourself according to our standards and specifications), franchise development services, and training course expenses. (See Item 11) Generally, \$5,000 of the initial franchise fee is paid on signing the Franchise Agreement, with an additional \$20,000 paid at the beginning of training. We, at our discretion, may permit deferral of up to \$50,000 of the remaining initial franchise fee of \$75,000 if you meet our credit standards. See Item 10. Any amount we do not agree to defer will be due upon opening for business. We may at our sole discretion reduce the initial franchise fee to \$5,000 for a franchise sold to an employee of ours (although there were no reduced fee sales to an employee in fiscal 2008) or waive the initial franchise fee if we believe it is in our best interest. During our last fiscal year, initial franchise fees ranged from \$0 to \$75,000.

The initial franchise fee is refundable only under the following circumstances: (1) if we and you are unable to agree on a site for your Club, or you fail to lease or purchase the approved location for your Club, within 90 days of completion of the Business Management School (See Item 11), then either party may terminate the Franchise Agreement and we will refund, without interest, the amount of the initial franchise fee you have paid (less costs we have incurred), provided you sign a general release; and (2) if, upon completion of training, you determine you do not desire to operate a buyer club, you may terminate the Franchise Agreement and we will refund, without interest, the amount of the initial franchise fee you have paid (less costs we have incurred), provided you sign a general release. The Form of General Release attached as Exhibit B-10 contains sample general release language acceptable to us when we require you to deliver a general release to us.

You must pay us before opening your Club a \$10,000 refundable security deposit to secure performance of your or your affiliates' obligations under the Franchise Agreement or any other agreement with us and/or any of our affiliates. If we determine you or your affiliates have failed to comply with any of your obligations under the Franchise Agreement or any other agreement with us and/or any of our affiliates, we have the right to use the security deposit for any reason we deem reasonably appropriate, including the following: (a) to refund or complete merchandise orders; (b) to refund membership fees to members of your Club; (c) for payment of any sums (liquidated or unliquidated) due to us or any of our affiliates under the Franchise Agreement or otherwise; and (d) to defray all expenses for 24 months for the operation of a DirectBuy Club located in the Marketing Area, if the agreement is terminated. We may require that you increase the amount of the security deposit as we deem reasonably appropriate to ensure fulfillment of your obligations, including the circumstances of any default by you or your affiliates. We will refund the security deposit upon expiration or termination of the Franchise Agreement once you have complied with all obligations under the Franchise Agreement or any other agreement with us and/or any of our affiliates. (See Section 3.06 of the Franchise Agreement)

ITEM 6

OTHER FEES

OTHER FEES

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Royalty	22% of new membership fees and 50% of renewal membership fees. (See Note 2)	5 business days after sale or renewal of membership.	<u>See</u> Note 2.
Website Service Fees	Currently, annual service fee is \$1.50 for each active membership in Club.	Due within 30 days after receipt of our monthly bill.	Payable for your participation in the Website.
Merchandise Payments	Will vary under circumstances.	The next business day.	All merchandise, except as otherwise approved by us, for your members must be ordered through us.
Lead Generation and Marketing Program Fees	Currently, \$20-\$100/qualified lead from TV, radio, print, Internet, and other media advertising, including a 3% management fee and \$3/lead brand development fee	Weekly in arrears for lead generation fees. Yearly in advance for infomercial talent and sponsorships.	<u>See</u> Note 3.
Fees and Charges Under Beta Financing	<u>See</u> Item 10.	<u>See</u> Item 10.	<u>See</u> Item 10.
Credit Card Processing Fees	A reasonable fee.	When the transaction is processed.	We have the right to process credit card transactions with the appropriate credit card servicing center and to charge you reasonable fees for these services.

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Ongoing Supply Purchases - Optional	Amount will vary depending upon the level of membership sales and marketing activity. The amount will be less than 2% of your annual operating expenses.	Due within 30 days after receipt of our monthly bill.	Currently we offer to sell to you miscellaneous forms and supplies, such as forms of membership agreement and retail installment contracts and marketing materials. The initial supply is covered by the initial franchise fee. (See Item 5)
Marketing and Legislative Fund Contributions	Not due during your first year; then \$1,000 per year. We may increase the contribution to 3% of your new membership sales.	30 days after invoice.	Currently, we are not collecting these contributions, but may do so in the future. See Item 11.
Merchandise Catalogs	Will vary under circumstances. Currently, we charge only what the manufacturer or supplier charges us.	As incurred.	We may assess you reasonable charges for updating merchandise catalogs.
Merchandise Account Administrative Fees	We can charge a reasonable fee for the handling of your merchandise orders.	As incurred.	We are not charging a fee at this time, but may do so under certain circumstances in the future.
Vendor Inspection and Monitoring Fees	Our reasonable costs and expenses	On demand.	Payable if you want to make available for your members any merchandise, products or services we have not yet approved. See Item 8.
Transfer Fee	You or the transferee must pay the then-current initial franchise fee applicable to your type of DirectBuy franchise.	Upon transferring the franchise.	

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Successor Franchise Fee	One-half of the then-current initial franchise fee.	As incurred.	<p>If we offer you a successor franchise on expiration of your agreement, we may charge you a successor franchise fee.</p> <p>If you are in compliance with the Franchise Agreement and you do not apply for or we do not offer you a successor franchise, you have the right to sell your Club to a third party for a new term provided the third party executes our then-current franchise agreement and pays our then current initial franchise fee.</p>
Interest on Late Payments	Highest contract rate of interest permitted by law not to exceed 2% per month.	Immediately.	This interest rate applies to any money you or any of your affiliates owe us or any of our affiliates after the due date.
Special Assistance	Per diem fees and charges that we establish – currently only out-of-pocket expenses.	Upon receipt of our bill.	This is for any special assistance you request.
Audit	Cost of audit.	Upon receipt of our bill.	Payable only if you fail to furnish required information or if we find an understatement of greater than 2% or if an audit reveals that you are in default of the Franchise Agreement.
Technical Support/Remedial Maintenance	Will vary under circumstances.	As incurred.	We will provide you remedial maintenance, upgrades and enhancements and other software technical support at your request.
Insurance	Our costs and premiums we incur. Will vary under circumstances.	As incurred.	If you fail to obtain the required insurance coverage for your Club, we may obtain the coverage at your expense.
Maintenance Costs	Will vary under circumstances.	As incurred.	If you fail or refuse to maintain your Club as required, we have the right to do so on your behalf and at your expense.

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Attorneys' Fees and other costs	Will vary under circumstances.	As incurred.	If we prevail in any legal dispute, you must reimburse us for our and our affiliates' costs and attorneys' fees.
Indemnification	Amount of loss or damages plus costs. Will vary under circumstances.	As incurred.	You must reimburse us, our affiliates, and our and their respective directors, officers, employees, shareholders, agents, successors, and assigns, from all losses and expenses we or they incur because of any litigation or claims from your franchise operations, or because of any surety bond or other security we or they provide in connection with your Club.

NOTE 1: Except as otherwise noted, all fees are payable to us or one of our affiliates. None of the fees are refundable.

NOTE 2: If your new membership fees are less than our suggested new membership fee, the 22% royalty will be based on the suggested price and not the actual price. For franchises in California and Nevada, while the parties agree to alternative compliance under the California and Nevada addenda, respectively, one-half of the royalty is payable within five business days after the sale or renewal of the membership, with the remainder payable 181 days after sale or renewal. We permit deferral of the royalty due on membership sales financed by our affiliate Beta Finance as a Beta II Contract. If a member does not timely make the first three payments required under a Beta III Contract, we will not charge you a royalty fee on the membership sale. (See Item 10.)

NOTE 3: We have the right to assess fees, or to require that you obtain services from third parties who may assess fees, for lead generation and marketing programs (e.g., infomercials, websites, sales videotapes, sales materials). (See Section 5.04 of the Franchise Agreement.) Currently, we pass through certain third party expenses charged to us, such as "market use" fees payable to infomercial spokesperson, media buying costs for infomercials and other media advertising and lead generation fees from third-party Internet sites. We may charge these fees to your credit card, in which event we may also pass through to you the credit card fees assessed for making these charges to your credit card. These fees and charges may change in the future.

ITEM 7

ESTIMATED INITIAL INVESTMENT**YOUR ESTIMATED INITIAL INVESTMENT****FOR A CLUB IN ALL STATES, OTHER THAN CALIFORNIA AND NEVADA:**

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$75,000	Two initial payments; the rest in a lump sum or installments, in our discretion.	\$5,000 on signing the Franchise Agreement, \$20,000 at beginning of training and the remainder either upon opening for business or in installments in our discretion. <u>See</u> Item 5.	Franchisor
Office Furniture, Fixtures and Graphics	\$150,000 - \$300,000	As incurred.	Before opening.	Other suppliers
Leasehold Improvements (Note 1)	\$200,000- \$700,000	As incurred or amortized under the lease.	Before opening.	Other suppliers
Lease and Utility Deposits	\$32,000 - \$60,000	As incurred.	Before opening.	Other Suppliers
Security Deposit	\$10,000	Lump Sum.	Before opening.	Franchisor
T.O.P.S. Computer Hardware and Sales and Marketing Computer Hardware (Note 2)	\$35,000 - \$60,000	As incurred.	Before opening or over term of lease.	Other suppliers
State Bond (Note 3)	\$0 - \$200,000	Lump Sum.	Before opening.	State government agency
Additional Funds - 3 Months (Notes 4)	\$200,000	As incurred.	As incurred.	Employees, suppliers, utilities, etc.
TOTAL ESTIMATED INITIAL INVESTMENT: (Note 5)	\$702,000 - \$1,405,000			

FOR A CLUB IN CALIFORNIA AND NEVADA:

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$75,000	Two initial payments; the rest in a lump sum or installments, in our discretion.	\$5,000 on signing the Franchise Agreement, \$20,000 at beginning of training and the remainder either upon opening for business or in installments in our discretion. See Item 5.	Franchisor
Office Furniture, Fixtures and Graphics	\$150,000 - \$300,000	As incurred.	Before opening.	Other suppliers
Leasehold Improvements (Note 1)	\$350,000 - \$800,000	As incurred.	Before opening.	Other suppliers
Lease and Utility Deposits	\$32,000 - \$60,000	As incurred.	Before opening.	Other Suppliers
Security Deposit	\$10,000	Lump Sum.	Before opening.	Franchisor
T.O.P.S. Computer Hardware; Sales and Marketing Computer Hardware (Note 2)	\$35,000 - \$60,000	As incurred.	Before opening or over term of lease.	Other suppliers
State Bond (Note 3)	California: \$250,000 Nevada: \$50,000	Lump Sum.	Before opening.	State government agency administering buyer club law
Additional Funds - 3 Months (Notes 4)	\$300,000 - \$600,000	As incurred.	As incurred.	Employees, suppliers, utilities, etc.
TOTAL ESTIMATED INITIAL INVESTMENT: (Note 5)	For your DirectBuy Club located in: California: \$1,202,000-\$2,155,000 Nevada: \$1,002,000 - \$1,955,000			

- NOTE 1 This amount depends on the size and condition of the premises and whether the lessor provides leasehold improvement allowances.
- NOTE 2 This is an estimate of the cost of purchasing computer hardware to operate the T.O.P.S. system software. (See Item 11). The low end of the range contemplates 8 computer stations; the high end contemplates 15 computer stations. This is an estimate of the cost of purchasing computer hardware to operate a sales and marketing system using one of the programs that we have currently approved. (See Item 11). The low end of the range contemplates one server for data base and call recording and 5 individual work stations; the high end of the range contemplates one data base server, one call recording server and 12 individual work stations.
- NOTE 3 This item covers the face amount of any bonds required of buyer clubs under state law Surety companies charge premiums for issuing bonds. Premiums are currently approximately 2% of the face amount. Surety companies sometimes also require letters of credit or other collateral to secure the bonds. In California and Nevada, these laws require a franchisee to post a bond and hold fees from membership sales in a trust account, subject to periodic withdrawals. As an alternative means of compliance, funds in the membership fee trust account may be withdrawn on an accelerated basis, provided the franchisor provides secondary security (\$2,500,000 bond and \$1,000,000 letter of credit in California and a \$250,000 bond in Nevada), and provided further that the franchisee in California posts a larger bond (\$250,000 bond) than ordinarily required (\$20,000 bond). We have elected at this time to provide this secondary security for franchisees in California and Nevada, so they are able to benefit from the less restrictive membership fee trust provisions. We anticipate that California and Nevada franchisees will opt for these alternative forms of compliance and, accordingly, have estimated the amount of the state bond to be \$250,000 for California franchisees and \$50,000 for Nevada franchisees. Starting rather abruptly in 2009, surety companies that had written or offered to write the state bonds for us and for franchisees again requesting more security than in the past to cover their exposure under the bonds. We responded to that change in surety practice by supporting our franchisees who were in compliance with their Franchise Agreements and unable to obtain surety bonds on their own, by posting collateral to secure both franchisee bonds and our bonds, in order to eliminate any need for franchisees to post their own collateral to secure the franchisee bonds. We and our affiliates also agreed to indemnify the surety for any losses under these franchisee bonds. Because of our exposure under the state bonds, we require franchisees in California, Nevada, and in other states where we post collateral and agree to indemnify the surety for any losses under the franchisee bonds, to indemnify us and our affiliates for any losses or expenses incurred because of the collateral posted and indemnification granted to secure the franchisee bonds and for any losses or expenses we incur under our bonds. Your indemnification obligation is contained in Section 17.04 of the Franchise Agreement. There is no assurance that we will continue to provide the secondary security required for this alternative form of compliance, or that we will continue to provide indemnity or collateral to franchisees. Each prospective franchisee is urged to consult with legal counsel about the requirements of any applicable buyers club act.
- NOTE 4 This is an estimate of your pre-opening costs and expenses and working capital requirements for the first 3 months of operations and is based on our own experience as a franchisor of DirectBuy Clubs since 1981 as well as our reasonable estimates. (These amounts are higher in California and Nevada due to the restriction on use of funds from membership sales.) This item covers rent, prepaid insurance, local permit and license fees, supplies, employee compensation and training, and other operational expenses for the first 3 months of

operations. You will need an approximately 8,000 to 15,000 sq. ft. Club facility, and we estimate monthly rental for such a facility to range from \$16,000 to \$30,000. This item does not cover personal financial needs. You must always maintain a minimum operating account balance of \$5,000 and a minimum merchandise balance account balance of \$5,000. These figures are estimates and we cannot assure you that you will not have additional expenses in starting your Club. Your actual cost will depend on factors such as your management skill, experience, and business acumen; local economic conditions; the local market for your Club; the prevailing wage rate; competition in the market place; and the sales level reached during the start-up phase. These amounts do not include any estimates for any debt service.

NOTE 5 The above charts provide an estimate of your initial investment for a new DirectBuy Club. Your estimated initial investment for purchasing a National Management-owned DirectBuy Club is discussed below. Except as otherwise noted, none of these payments is refundable. These payments are only estimates and your costs may be higher, depending on your particular circumstances. You should review these figures carefully with a business advisor, accountant, or attorney before making any decision to purchase a franchise.

Currently, we and our affiliates do not offer any financing for your initial investment, except we may defer up to \$50,000 of the \$75,000 initial franchise fee as described above and further described in Item 10. Any deferred amount will bear interest at a simple interest rate up to 15% and for a maximum period as we and you determine based upon prevailing interest rates and your credit-worthiness. You will not make any payments for six months and then you will pay \$100 for each new membership sold after the sixth month after your Club opens for business within five business days of the sale of the membership. The availability and terms of financing with third-party lenders will depend on factors such as the availability of financing generally, your credit-worthiness and policies of lending institutions concerning the type of business to be operated.

Occasionally, we may offer for sale to prospective franchisees National Management-owned DirectBuy Club. The initial investment for these Clubs may differ significantly from the estimates for a new franchise described in the charts above due to the operations and value of the Club. In our past fiscal year, we did not sell any National Management-owned Clubs.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

Except as described below, you are not required by the Franchise Agreement or any other device or practice to purchase or lease products or services (1) from us or our affiliates or other suppliers we have designated or approved, (2) which meet our specifications, or (3) which we have the right to approve (collectively "source-restricted purchases"). We estimate that source-restricted purchases will equal approximately 80% - 90% of your total purchases in connection with the establishment of your DirectBuy Club and approximately 50% - 70% of your total purchases in connection with the ongoing operation of your DirectBuy Club.

The essence of DirectBuy Clubs is the ability to obtain merchandise and services directly from manufacturers and suppliers at their prevailing prices and to pass these savings on to their members. All DirectBuy Clubs must consolidate their buying power in order to do so. Accordingly, you must order all merchandise and other authorized products and services exclusively through us in accordance with our procedures, unless we have authorized you to do otherwise. We may modify merchandise ordering procedures, including requiring immediate submission of orders through computer transmissions or facsimile and immediate electronic transfers of funds. Through UCC, we will order authorized merchandise on your behalf from the appropriate manufacturer or supplier at the manufacturer's or supplier's then current published price in accordance with our procedures. We or one of our affiliates is entitled to keep any rebates or discounts from the manufacturer's or supplier's then current published price, as well as promotional benefits, allowances, and incentives without any obligation to pass them on to you. We or one of our affiliates is entitled to use the freight or shipping companies as we or they deem appropriate, including UCC Distribution, to deliver merchandise to your Club.

You must order for members of your Club the merchandise and other products and services we authorize for DirectBuy Clubs in compliance with our standard policies, and procedures. You may not, without our approval, order or otherwise offer for sale any merchandise, or other products and services, that we have not then authorized for DirectBuy Clubs. We may authorize you (which authorization may be modified or withdrawn at any time) to obtain or make available for your members Authorized Local Products and Services (as defined below) from Local Providers (as defined below) in accordance with the requirements, procedures, and policies we may impose, if in all instances you secure arrangements with Local Providers to offer and sell Authorized Local Products and Services at the lowest possible price to your members and further if you may not directly or indirectly (such as through an Owner, a member of the Immediate Family of an Owner or an affiliate) under any circumstances (a) mark-up any Authorized Local Products and Services, (b) solicit, accept, or receive any payments, fees, rebates, allowances (including advertising allowances), discounts (including prompt payment discounts), reimbursements, or any other remuneration (whether in cash or in kind) from any Local Providers, without our prior consent; or (c) own or have any legal or beneficial interest in any Local Provider (or any of its affiliates), without our prior consent, other than the ownership of a non-controlling interest in publicly traded securities. "Authorized Local Products and Services" are the merchandise and other products and services of the kinds and of the brands (or from the suppliers) as we determine that you may order directly from a Local Provider. "Local Providers" are suppliers we have approved for Authorized Local Products and Services. We have the unrestricted right at any time to authorize, change and/or discontinue any and all Authorized Local Products and Services and/or Local Providers and you shall not order or re-order any merchandise, products or services, or from any suppliers, that are not then authorized by us.

If you propose to obtain or make available for your members any merchandise, products or services, or any of these items from any supplier that is not then authorized by us, you and the proposed supplier must submit to us all information that we may request in order to determine whether to authorize

the merchandise, products or services, or the supplier. We have the absolute right to disapprove any merchandise, products or services, or supplier. We may prescribe procedures for you to request authorization and impose obligations on suppliers (which may be incorporated in a written agreement we may require), including agreeing to our Local Provider policies and publishing information about the Local Provider in the media as we may require, such as posting the information on www.members.directbuy.com. There is no time period provided by contract by when we will notify you as to whether authorization is granted or denied. We may obtain from you and/or Local Providers reimbursement of our reasonable costs and expenses incurred in the authorization process and on-going monitoring of the supplier's compliance with our requirements. You acknowledge and agree that we do not act as agent, representative or in any other intermediary or fiduciary capacity for you in our relationship with Local Providers. We may impose limits on the number of Local Providers. We have the right to monitor the pricing practices, quality of merchandise and services provided by Local Providers in a manner we deem appropriate and may terminate any Local Provider who does not meet or follow our requirements and/or policies, as may be in effect.

You may use in the development and operation of your Club only the fixtures, equipment, furniture, signs, décor items, and other materials and supplies that we have designated or approved for DirectBuy Clubs as meeting our standards and specifications (which we may modify), and you must use all items that we designate as mandatory. We may designate one or more approved suppliers, which may include us or any of our affiliates, from which you must purchase or lease the items as we may specify. Except for any of these items that you must obtain from designated suppliers, you may purchase or lease the approved brands and types of equipment, outdoor signs, and other materials and supplies from any supplier, which may include us or any of our affiliates. The fixtures, equipment, furniture, signs, décor items, and other materials and supplies to be used in your Club may display the Marks and/or distinctive features, images, or designs associated with DirectBuy Clubs as we direct or approve, and your right to use these items will be limited to the operation of your DirectBuy Club in accordance with your Franchise Agreement. Currently, we offer to sell to franchisees miscellaneous forms and supplies, such as forms of membership agreement and retail installment contracts and marketing materials. We are an approved supplier for these items, but not the only approved supplier. Currently, you must use our proprietary T.OP.S. software program. We are the only approved supplier for this software which assists franchisees in processing membership applications and related information, and merchandise orders, but we do not charge any fee.

We formulate and may modify, at our sole discretion, specifications and standards we impose on franchisees and suppliers. We do not maintain written standards and specifications for every item. When written standards or specifications exist, we will make them available to franchisees through the Operating Manual or other communications in the ordinary course of business and to suppliers by written agreement. In the absence of written standards or specifications, we may require you to submit a sample and other information about a proposed new item for examination or testing.

We attempt to negotiate purchase arrangements with suppliers (including price terms) for the benefit of members, for our benefit, and for the benefit of all DirectBuy Clubs, including those owned by franchisees. We do not provide material benefits (e.g. renewal or additional franchises) to franchisees based on their use of designated or approved suppliers.

None of our officers owns an interest in any privately-held suppliers, or a material interest in any publicly-held suppliers, of the DirectBuy franchise system.

There are no purchasing or distribution cooperatives.

Items We Supply Franchisees or Derive Revenue From

Most merchandise orders are processed through us and submitted to manufacturers and suppliers by UCC. UCC purchases merchandise for DirectBuy Clubs from over 700 manufacturers and suppliers. We estimate that franchisees submit over 60% of their orders for their members through us. (The remainder of the franchisees' merchandise orders are with Local Providers.) During UCC's fiscal year ending July 31, 2008, UCC's total revenue from merchandise purchases was approximately \$807,000,000. This amount includes merchandise cost, estimated freight, and Franchisee's handling fee, all of which are passed on to the appropriate parties. (For financial accounting purposes, UCC does not recognize merchandise sales as income or merchandise purchases as cost of goods sold. Accordingly, UCC's financial statements do not include merchandise transactions.)

We (on our behalf and for our affiliates) reserve the right to keep rebates, discounts and other payments from manufacturers and suppliers. To date, some manufacturers and suppliers have paid UCC early-pay discounts, and we and UCC have received other payments that are used to provide benefits to members and franchisees and to pay for certain marketing and promotional expenses, such as the costs of Direction Magazine, sales aids, and promotional events for our conventions. During our fiscal year ending in July 31, 2008, total revenues from these items were approximately \$10,900,000. This information is derived from UCC's and our unaudited internal accounting information.

During our fiscal year ending July 31, 2008, our total revenues from Franchisee purchases of miscellaneous forms and supplies was de minimis (i.e. less than 1% of our total consolidated revenues of \$108,735,133 as stated on our audited financial statements.) Our revenue from purchases of miscellaneous forms and supplies is derived from our unaudited internal accounting information. The initial supply of miscellaneous forms and supplies is covered by the initial franchise fee. (See Item 5) The ongoing cost of purchasing these materials is de minimis (i.e., less than 2% of your annual operating expenses).

We also derive revenue from Club members' purchases of merchandise through the Website. We charge Club members a handling fee on all merchandise orders placed through the Website. (See this Item 8, "Internet Websites") We also may sell to third-party advertisers advertising space anywhere on the Website without compensation to you.

As noted in Item 1, an affiliate, UCC Distribution, Inc., provides shipping services to Club members for some merchandise orders and is paid by the Club members for these shipping services.

Site Selection.

You must select a site for your Club that is acceptable to us. (See Item 11)

Purchase and Lease of Premises.

Any lease or sublease for the premises of your Club must contain such provisions as are reasonably acceptable to us and at our discretion must be conditionally assigned to us.

Development of the Premises.

You are responsible for developing your Club and for all expenses associated with it. We will furnish you prototype plans for a DirectBuy Club. You must modify those prototype plans so that the plans and all specifications comply with all applicable ordinances, building codes and permit requirements and any lease requirements and restrictions. All development must be in accordance with

ITEM 5

INITIAL FEES

The initial franchise fee we charge you is \$75,000 and is nonrefundable, except as noted below. The initial franchise fee includes our standard initial operation package, which consists of an initial inventory of forms and supplies (this package does not include any display merchandise, showroom fixtures, or signs or graphics, which you have to buy yourself according to our standards and specifications), franchise development services, and training course expenses. (See Item 11) Generally, \$5,000 of the initial franchise fee is paid on signing the Franchise Agreement, with an additional \$20,000 paid at the beginning of training. We, at our discretion, may permit deferral of up to \$50,000 of the remaining initial franchise fee of \$75,000 if you meet our credit standards. See Item 10. Any amount we do not agree to defer will be due upon opening for business. We may at our sole discretion reduce the initial franchise fee to \$5,000 for a franchise sold to an employee of ours (although there were no reduced fee sales to an employee in fiscal 2008) or waive the initial franchise fee if we believe it is in our best interest. During our last fiscal year, initial franchise fees ranged from \$0 to \$75,000.

The initial franchise fee is refundable only under the following circumstances: (1) if we and you are unable to agree on a site for your Club, or you fail to lease or purchase the approved location for your Club, within 90 days of completion of the Business Management School (See Item 11), then either party may terminate the Franchise Agreement and we will refund, without interest, the amount of the initial franchise fee you have paid (less costs we have incurred), provided you sign a general release; and (2) if, upon completion of training, you determine you do not desire to operate a buyer club, you may terminate the Franchise Agreement and we will refund, without interest, the amount of the initial franchise fee you have paid (less costs we have incurred), provided you sign a general release. The Form of General Release attached as Exhibit B-10 contains sample general release language acceptable to us when we require you to deliver a general release to us.

You must pay us before opening your Club a \$10,000 refundable security deposit to secure performance of your or your affiliates' obligations under the Franchise Agreement or any other agreement with us and/or any of our affiliates. If we determine you or your affiliates have failed to comply with any of your obligations under the Franchise Agreement or any other agreement with us and/or any of our affiliates, we have the right to use the security deposit for any reason we deem reasonably appropriate, including the following: (a) to refund or complete merchandise orders; (b) to refund membership fees to members of your Club; (c) for payment of any sums (liquidated or unliquidated) due to us or any of our affiliates under the Franchise Agreement or otherwise; and (d) to defray all expenses for 24 months for the operation of a DirectBuy Club located in the Marketing Area, if the agreement is terminated. We may require that you increase the amount of the security deposit as we deem reasonably appropriate to ensure fulfillment of your obligations, including the circumstances of any default by you or your affiliates. We will refund the security deposit upon expiration or termination of the Franchise Agreement once you have complied with all obligations under the Franchise Agreement or any other agreement with us and/or any of our affiliates. (See Section 3.06 of the Franchise Agreement)

ITEM 6

OTHER FEES

OTHER FEES

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Royalty	22% of new membership fees and 50% of renewal membership fees. (See Note 2)	5 business days after sale or renewal of membership.	<u>See Note 2.</u>
Website Service Fees	Currently, annual service fee is \$1.50 for each active membership in Club.	Due within 30 days after receipt of our monthly bill.	Payable for your participation in the Website.
Merchandise Payments	Will vary under circumstances.	The next business day.	All merchandise, except as otherwise approved by us, for your members must be ordered through us.
Lead Generation and Marketing Program Fees	Currently, \$20-\$100/qualified lead from TV, radio, print, Internet, and other media advertising, including a 3% management fee and \$3/lead brand development fee	Weekly in arrears for lead generation fees. Yearly in advance for infomercial talent and sponsorships.	<u>See Note 3.</u>
Fees and Charges Under Beta Financing	<u>See Item 10.</u>	<u>See Item 10.</u>	<u>See Item 10.</u>
Credit Card Processing Fees	A reasonable fee.	When the transaction is processed.	We have the right to process credit card transactions with the appropriate credit card servicing center and to charge you reasonable fees for these services.

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Ongoing Supply Purchases - Optional	Amount will vary depending upon the level of membership sales and marketing activity. The amount will be less than 2% of your annual operating expenses.	Due within 30 days after receipt of our monthly bill.	Currently we offer to sell to you miscellaneous forms and supplies, such as forms of membership agreement and retail installment contracts and marketing materials. The initial supply is covered by the initial franchise fee. (See Item 5)
Marketing and Legislative Fund Contributions	Not due during your first year; then \$1,000 per year. We may increase the contribution to 3% of your new membership sales.	30 days after invoice.	Currently, we are not collecting these contributions, but may do so in the future. See Item 11.
Merchandise Catalogs	Will vary under circumstances. Currently, we charge only what the manufacturer or supplier charges us.	As incurred.	We may assess you reasonable charges for updating merchandise catalogs.
Merchandise Account Administrative Fees	We can charge a reasonable fee for the handling of your merchandise orders.	As incurred.	We are not charging a fee at this time, but may do so under certain circumstances in the future.
Vendor Inspection and Monitoring Fees	Our reasonable costs and expenses	On demand.	Payable if you want to make available for your members any merchandise, products or services we have not yet approved. See Item 8.
Transfer Fee	You or the transferee must pay the then-current initial franchise fee applicable to your type of DirectBuy franchise.	Upon transferring the franchise.	

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Successor Franchise Fee	One-half of the then-current initial franchise fee.	As incurred.	<p>If we offer you a successor franchise on expiration of your agreement, we may charge you a successor franchise fee.</p> <p>If you are in compliance with the Franchise Agreement and you do not apply for or we do not offer you a successor franchise, you have the right to sell your Club to a third party for a new term provided the third party executes our then-current franchise agreement and pays our then current initial franchise fee.</p>
Interest on Late Payments	Highest contract rate of interest permitted by law not to exceed 2% per month.	Immediately.	This interest rate applies to any money you or any of your affiliates owe us or any of our affiliates after the due date.
Special Assistance	Per diem fees and charges that we establish – currently only out-of-pocket expenses.	Upon receipt of our bill.	This is for any special assistance you request.
Audit	Cost of audit.	Upon receipt of our bill.	Payable only if you fail to furnish required information or if we find an understatement of greater than 2% or if an audit reveals that you are in default of the Franchise Agreement.
Technical Support/Remedial Maintenance	Will vary under circumstances.	As incurred.	We will provide you remedial maintenance, upgrades and enhancements and other software technical support at your request.
Insurance	Our costs and premiums we incur. Will vary under circumstances.	As incurred.	If you fail to obtain the required insurance coverage for your Club, we may obtain the coverage at your expense.
Maintenance Costs	Will vary under circumstances.	As incurred.	If you fail or refuse to maintain your Club as required, we have the right to do so on your behalf and at your expense.

TYPE OF FEE (Note 1)	AMOUNT	DUE DATE	REMARKS (Note 1)
Attorneys' Fees and other costs	Will vary under circumstances.	As incurred.	If we prevail in any legal dispute, you must reimburse us for our and our affiliates' costs and attorneys' fees.
Indemnification	Amount of loss or damages plus costs. Will vary under circumstances.	As incurred.	You must reimburse us, our affiliates, and our and their respective directors, officers, employees, shareholders, agents, successors, and assigns, from all losses and expenses we or they incur because of any litigation or claims from your franchise operations, or because of any surety bond or other security we or they provide in connection with your Club.

NOTE 1: Except as otherwise noted, all fees are payable to us or one of our affiliates. None of the fees are refundable.

NOTE 2: If your new membership fees are less than our suggested new membership fee, the 22% royalty will be based on the suggested price and not the actual price. For franchises in California and Nevada, while the parties agree to alternative compliance under the California and Nevada addenda, respectively, one-half of the royalty is payable within five business days after the sale or renewal of the membership, with the remainder payable 181 days after sale or renewal. We permit deferral of the royalty due on membership sales financed by our affiliate Beta Finance as a Beta II Contract. If a member does not timely make the first three payments required under a Beta III Contract, we will not charge you a royalty fee on the membership sale. (See Item 10.)

NOTE 3: We have the right to assess fees, or to require that you obtain services from third parties who may assess fees, for lead generation and marketing programs (e.g., infomercials, websites, sales videotapes, sales materials). (See Section 5.04 of the Franchise Agreement.) Currently, we pass through certain third party expenses charged to us, such as "market use" fees payable to infomercial spokesperson, media buying costs for infomercials and other media advertising and lead generation fees from third-party Internet sites. We may charge these fees to your credit card, in which event we may also pass through to you the credit card fees assessed for making these charges to your credit card. These fees and charges may change in the future.

ITEM 7

ESTIMATED INITIAL INVESTMENT**YOUR ESTIMATED INITIAL INVESTMENT****FOR A CLUB IN ALL STATES, OTHER THAN CALIFORNIA AND NEVADA:**

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$75,000	Two initial payments; the rest in a lump sum or installments, in our discretion.	\$5,000 on signing the Franchise Agreement, \$20,000 at beginning of training and the remainder either upon opening for business or in installments in our discretion. See Item 5.	Franchisor
Office Furniture, Fixtures and Graphics	\$150,000 - \$300,000	As incurred.	Before opening.	Other suppliers
Leasehold Improvements (Note 1)	\$200,000- \$700,000	As incurred or amortized under the lease.	Before opening.	Other suppliers
Lease and Utility Deposits	\$32,000 - \$60,000	As incurred.	Before opening.	Other Suppliers
Security Deposit	\$10,000	Lump Sum.	Before opening.	Franchisor
T.O.P.S. Computer Hardware and Sales and Marketing Computer Hardware (Note 2)	\$35,000 - \$60,000	As incurred.	Before opening or over term of lease.	Other suppliers
State Bond (Note 3)	\$0 - \$200,000	Lump Sum.	Before opening.	State government agency
Additional Funds - 3 Months (Notes 4)	\$200,000	As incurred.	As incurred.	Employees, suppliers, utilities, etc.
TOTAL ESTIMATED INITIAL INVESTMENT: (Note 5)	\$702,000 - \$1,405,000			

FOR A CLUB IN CALIFORNIA AND NEVADA:

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee	\$75,000	Two initial payments; the rest in a lump sum or installments, in our discretion.	\$5,000 on signing the Franchise Agreement, \$20,000 at beginning of training and the remainder either upon opening for business or in installments in our discretion. <u>See</u> Item 5.	Franchisor
Office Furniture, Fixtures and Graphics	\$150,000 - \$300,000	As incurred.	Before opening.	Other suppliers
Leasehold Improvements (Note 1)	\$350,000 - \$800,000	As incurred.	Before opening.	Other suppliers
Lease and Utility Deposits	\$32,000 - \$60,000	As incurred.	Before opening.	Other Suppliers
Security Deposit	\$10,000	Lump Sum.	Before opening.	Franchisor
T.O.P.S. Computer Hardware; Sales and Marketing Computer Hardware (Note 2)	\$35,000 - \$60,000	As incurred.	Before opening or over term of lease.	Other suppliers
State Bond (Note 3)	California: \$250,000 Nevada: \$50,000	Lump Sum.	Before opening.	State government agency administering buyer club law
Additional Funds - 3 Months (Notes 4)	\$300,000 - \$600,000	As incurred.	As incurred.	Employees, suppliers, utilities, etc.
TOTAL ESTIMATED INITIAL INVESTMENT: (Note 5)	For your DirectBuy Club located in: California: \$1,202,000-\$2,155,000 Nevada: \$1,002,000 - \$1,955,000			

- NOTE 1 This amount depends on the size and condition of the premises and whether the lessor provides leasehold improvement allowances.
- NOTE 2 This is an estimate of the cost of purchasing computer hardware to operate the T.O.P.S. system software. (See Item 11). The low end of the range contemplates 8 computer stations; the high end contemplates 15 computer stations. This is an estimate of the cost of purchasing computer hardware to operate a sales and marketing system using one of the programs that we have currently approved. (See Item 11). The low end of the range contemplates one server for data base and call recording and 5 individual work stations; the high end of the range contemplates one data base server, one call recording server and 12 individual work stations.
- NOTE 3 This item covers the face amount of any bonds required of buyer clubs under state law Surety companies charge premiums for issuing bonds. Premiums are currently approximately 2% of the face amount. Surety companies sometimes also require letters of credit or other collateral to secure the bonds. In California and Nevada, these laws require a franchisee to post a bond and hold fees from membership sales in a trust account, subject to periodic withdrawals. As an alternative means of compliance, funds in the membership fee trust account may be withdrawn on an accelerated basis, provided the franchisor provides secondary security (\$2,500,000 bond and \$1,000,000 letter of credit in California and a \$250,000 bond in Nevada), and provided further that the franchisee in California posts a larger bond (\$250,000 bond) than ordinarily required (\$20,000 bond). We have elected at this time to provide this secondary security for franchisees in California and Nevada, so they are able to benefit from the less restrictive membership fee trust provisions. We anticipate that California and Nevada franchisees will opt for these alternative forms of compliance and, accordingly, have estimated the amount of the state bond to be \$250,000 for California franchisees and \$50,000 for Nevada franchisees. Starting rather abruptly in 2009, surety companies that had written or offered to write the state bonds for us and for franchisees again requesting more security than in the past to cover their exposure under the bonds. We responded to that change in surety practice by supporting our franchisees who were in compliance with their Franchise Agreements and unable to obtain surety bonds on their own, by posting collateral to secure both franchisee bonds and our bonds, in order to eliminate any need for franchisees to post their own collateral to secure the franchisee bonds. We and our affiliates also agreed to indemnify the surety for any losses under these franchisee bonds. Because of our exposure under the state bonds, we require franchisees in California, Nevada, and in other states where we post collateral and agree to indemnify the surety for any losses under the franchisee bonds, to indemnify us and our affiliates for any losses or expenses incurred because of the collateral posted and indemnification granted to secure the franchisee bonds and for any losses or expenses we incur under our bonds. Your indemnification obligation is contained in Section 17.04 of the Franchise Agreement. There is no assurance that we will continue to provide the secondary security required for this alternative form of compliance, or that we will continue to provide indemnity or collateral to franchisees. Each prospective franchisee is urged to consult with legal counsel about the requirements of any applicable buyers club act.
- NOTE 4 This is an estimate of your pre-opening costs and expenses and working capital requirements for the first 3 months of operations and is based on our own experience as a franchisor of DirectBuy Clubs since 1981 as well as our reasonable estimates. (These amounts are higher in California and Nevada due to the restriction on use of funds from membership sales.) This item covers rent, prepaid insurance, local permit and license fees, supplies, employee compensation and training, and other operational expenses for the first 3 months of

operations. You will need an approximately 8,000 to 15,000 sq. ft. Club facility, and we estimate monthly rental for such a facility to range from \$16,000 to \$30,000. This item does not cover personal financial needs. You must always maintain a minimum operating account balance of \$5,000 and a minimum merchandise balance account balance of \$5,000. These figures are estimates and we cannot assure you that you will not have additional expenses in starting your Club. Your actual cost will depend on factors such as your management skill, experience, and business acumen; local economic conditions; the local market for your Club; the prevailing wage rate; competition in the market place; and the sales level reached during the start-up phase. These amounts do not include any estimates for any debt service.

NOTE 5 The above charts provide an estimate of your initial investment for a new DirectBuy Club. Your estimated initial investment for purchasing a National Management-owned DirectBuy Club is discussed below. Except as otherwise noted, none of these payments is refundable. These payments are only estimates and your costs may be higher, depending on your particular circumstances. You should review these figures carefully with a business advisor, accountant, or attorney before making any decision to purchase a franchise.

Currently, we and our affiliates do not offer any financing for your initial investment, except we may defer up to \$50,000 of the \$75,000 initial franchise fee as described above and further described in Item 10. Any deferred amount will bear interest at a simple interest rate up to 15% and for a maximum period as we and you determine based upon prevailing interest rates and your credit-worthiness. You will not make any payments for six months and then you will pay \$100 for each new membership sold after the sixth month after your Club opens for business within five business days of the sale of the membership. The availability and terms of financing with third-party lenders will depend on factors such as the availability of financing generally, your credit-worthiness and policies of lending institutions concerning the type of business to be operated.

Occasionally, we may offer for sale to prospective franchisees National Management-owned DirectBuy Club. The initial investment for these Clubs may differ significantly from the estimates for a new franchise described in the charts above due to the operations and value of the Club. In our past fiscal year, we did not sell any National Management-owned Clubs.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

Except as described below, you are not required by the Franchise Agreement or any other device or practice to purchase or lease products or services (1) from us or our affiliates or other suppliers we have designated or approved, (2) which meet our specifications, or (3) which we have the right to approve (collectively "source-restricted purchases"). We estimate that source-restricted purchases will equal approximately 80% - 90% of your total purchases in connection with the establishment of your DirectBuy Club and approximately 50% - 70% of your total purchases in connection with the ongoing operation of your DirectBuy Club.

The essence of DirectBuy Clubs is the ability to obtain merchandise and services directly from manufacturers and suppliers at their prevailing prices and to pass these savings on to their members. All DirectBuy Clubs must consolidate their buying power in order to do so. Accordingly, you must order all merchandise and other authorized products and services exclusively through us in accordance with our procedures, unless we have authorized you to do otherwise. We may modify merchandise ordering procedures, including requiring immediate submission of orders through computer transmissions or facsimile and immediate electronic transfers of funds. Through UCC, we will order authorized merchandise on your behalf from the appropriate manufacturer or supplier at the manufacturer's or supplier's then current published price in accordance with our procedures. We or one of our affiliates is entitled to keep any rebates or discounts from the manufacturer's or supplier's then current published price, as well as promotional benefits, allowances, and incentives without any obligation to pass them on to you. We or one of our affiliates is entitled to use the freight or shipping companies as we or they deem appropriate, including UCC Distribution, to deliver merchandise to your Club.

You must order for members of your Club the merchandise and other products and services we authorize for DirectBuy Clubs in compliance with our standard policies, and procedures. You may not, without our approval, order or otherwise offer for sale any merchandise, or other products and services, that we have not then authorized for DirectBuy Clubs. We may authorize you (which authorization may be modified or withdrawn at any time) to obtain or make available for your members Authorized Local Products and Services (as defined below) from Local Providers (as defined below) in accordance with the requirements, procedures, and policies we may impose, if in all instances you secure arrangements with Local Providers to offer and sell Authorized Local Products and Services at the lowest possible price to your members and further if you may not directly or indirectly (such as through an Owner, a member of the Immediate Family of an Owner or an affiliate) under any circumstances (a) mark-up any Authorized Local Products and Services, (b) solicit, accept, or receive any payments, fees, rebates, allowances (including advertising allowances), discounts (including prompt payment discounts), reimbursements, or any other remuneration (whether in cash or in kind) from any Local Providers, without our prior consent; or (c) own or have any legal or beneficial interest in any Local Provider (or any of its affiliates), without our prior consent, other than the ownership of a non-controlling interest in publicly traded securities. "Authorized Local Products and Services" are the merchandise and other products and services of the kinds and of the brands (or from the suppliers) as we determine that you may order directly from a Local Provider. "Local Providers" are suppliers we have approved for Authorized Local Products and Services. We have the unrestricted right at any time to authorize, change and/or discontinue any and all Authorized Local Products and Services and/or Local Providers and you shall not order or re-order any merchandise, products or services, or from any suppliers, that are not then authorized by us.

If you propose to obtain or make available for your members any merchandise, products or services, or any of these items from any supplier that is not then authorized by us, you and the proposed supplier must submit to us all information that we may request in order to determine whether to authorize

the merchandise, products or services, or the supplier. We have the absolute right to disapprove any merchandise, products or services, or supplier. We may prescribe procedures for you to request authorization and impose obligations on suppliers (which may be incorporated in a written agreement we may require), including agreeing to our Local Provider policies and publishing information about the Local Provider in the media as we may require, such as posting the information on www.members.directbuy.com. There is no time period provided by contract by when we will notify you as to whether authorization is granted or denied. We may obtain from you and/or Local Providers reimbursement of our reasonable costs and expenses incurred in the authorization process and on-going monitoring of the supplier's compliance with our requirements. You acknowledge and agree that we do not act as agent, representative or in any other intermediary or fiduciary capacity for you in our relationship with Local Providers. We may impose limits on the number of Local Providers. We have the right to monitor the pricing practices, quality of merchandise and services provided by Local Providers in a manner we deem appropriate and may terminate any Local Provider who does not meet or follow our requirements and/or policies, as may be in effect.

You may use in the development and operation of your Club only the fixtures, equipment, furniture, signs, décor items, and other materials and supplies that we have designated or approved for DirectBuy Clubs as meeting our standards and specifications (which we may modify), and you must use all items that we designate as mandatory. We may designate one or more approved suppliers, which may include us or any of our affiliates, from which you must purchase or lease the items as we may specify. Except for any of these items that you must obtain from designated suppliers, you may purchase or lease the approved brands and types of equipment, outdoor signs, and other materials and supplies from any supplier, which may include us or any of our affiliates. The fixtures, equipment, furniture, signs, décor items, and other materials and supplies to be used in your Club may display the Marks and/or distinctive features, images, or designs associated with DirectBuy Clubs as we direct or approve, and your right to use these items will be limited to the operation of your DirectBuy Club in accordance with your Franchise Agreement. Currently, we offer to sell to franchisees miscellaneous forms and supplies, such as forms of membership agreement and retail installment contracts and marketing materials. We are an approved supplier for these items, but not the only approved supplier. Currently, you must use our proprietary T.OP.S. software program. We are the only approved supplier for this software which assists franchisees in processing membership applications and related information, and merchandise orders, but we do not charge any fee.

We formulate and may modify, at our sole discretion, specifications and standards we impose on franchisees and suppliers. We do not maintain written standards and specifications for every item. When written standards or specifications exist, we will make them available to franchisees through the Operating Manual or other communications in the ordinary course of business and to suppliers by written agreement. In the absence of written standards or specifications, we may require you to submit a sample and other information about a proposed new item for examination or testing.

We attempt to negotiate purchase arrangements with suppliers (including price terms) for the benefit of members, for our benefit, and for the benefit of all DirectBuy Clubs, including those owned by franchisees. We do not provide material benefits (e.g. renewal or additional franchises) to franchisees based on their use of designated or approved suppliers.

None of our officers owns an interest in any privately-held suppliers, or a material interest in any publicly-held suppliers, of the DirectBuy franchise system.

There are no purchasing or distribution cooperatives.

Items We Supply Franchisees or Derive Revenue From

Most merchandise orders are processed through us and submitted to manufacturers and suppliers by UCC. UCC purchases merchandise for DirectBuy Clubs from over 700 manufacturers and suppliers. We estimate that franchisees submit over 60% of their orders for their members through us. (The remainder of the franchisees' merchandise orders are with Local Providers.) During UCC's fiscal year ending July 31, 2009, UCC's total revenue from merchandise purchases was approximately \$662,000,000. This amount includes merchandise cost, estimated freight, and Franchisee's handling fee, all of which are passed on to the appropriate parties. (For financial accounting purposes, UCC does not recognize merchandise sales as income or merchandise purchases as cost of goods sold. Accordingly, UCC's financial statements do not include merchandise transactions.)

We (on our behalf and for our affiliates) reserve the right to keep rebates, discounts and other payments from manufacturers and suppliers. To date, some manufacturers and suppliers have paid UCC early-pay discounts, and we and UCC have received other payments that are used to provide benefits to members and franchisees and to pay for certain marketing and promotional expenses, such as the costs of Direction Magazine, sales aids, and promotional events for our conventions. During our fiscal year ending in July 31, 2009, total revenues from these items were approximately \$9,700,000. This information is derived from UCC's and our unaudited internal accounting information.

During our fiscal year ending July 31, 2009, our total revenues from Franchisee purchases of miscellaneous forms and supplies was de minimis, approximately \$586,000 (less than 1% of our total consolidated revenues of \$121,600,568 as stated on our audited financial statements.) Our revenue from purchases of miscellaneous forms and supplies is derived from our unaudited internal accounting information. The initial supply of miscellaneous forms and supplies is covered by the initial franchise fee. (See Item 5) The ongoing cost of purchasing these materials is de minimis (*i.e.*, less than 2% of your annual operating expenses).

We also derive revenue from Club members' purchases of merchandise through the Website. We charge Club members a handling fee on all merchandise orders placed through the Website. (See this Item 8, "Internet Websites") We also may sell to third-party advertisers advertising space anywhere on the Website without compensation to you.

As noted in Item 1, an affiliate, UCC Distribution, Inc., provides shipping services to Club members for some merchandise orders and is paid by the Club members for these shipping services.

Site Selection.

You must select a site for your Club that is acceptable to us. (See Item 11)

Purchase and Lease of Premises.

Any lease or sublease for the premises of your Club must contain such provisions as are reasonably acceptable to us and at our discretion must be conditionally assigned to us.

Development of the Premises.

You are responsible for developing your Club and for all expenses associated with it. We will furnish you prototype plans for a DirectBuy Club. You must modify those prototype plans so that the plans and all specifications comply with all applicable ordinances, building codes and permit requirements and any lease requirements and restrictions. All development must be in accordance with